

Draft Comment Summary and Responses
Proposed Amendment to General Permit for Storm Water Discharges From Small Municipal Separate Storm Sewer Systems
(MS4), Implementing Region-Specific Total Maximum Daily Load (TMDL) Requirements
Comment Deadline: 12 noon on August 21, 2017

The following comments have been summarized, requested insertions are shown in underline format and requested deletions are shown in strikethrough format.

Commenter	No.	Comment	Response
California Stormwater Quality Association	CASQA1-1	<p>Replace the term “WLA” with terms consistent with the Federal Regulations when referring to a numeric or BMP-based effluent limitation or permit condition.</p> <p>Recommendation Replace the term “WLA” with effluent limitations and/or conditions consistent with the requirements and assumptions in the TMDL.</p>	<p>Attachment G of the proposed permit amendment requires specific management practice-based planning and implementation to address best management practice-based (BMP-based) water quality based effluent limitations (WQBELs). Attachment G also contains monitoring and reporting requirements, and other requirements required of BMP-based WQBELs. To address this comment, the proposed Small MS4 Permit amendment has been revised to use the term “BMP-based WQBELs and other permit requirements” in reference to these permit requirements.</p> <p>The purpose of TMDL implementation in the permit is for the Discharger to comply with the water quality results specified in the TMDL wasteload allocations in order to attain water quality standards in impaired receiving waters. In Attachment G, the State Water Board has established BMP-based implementation requirements (including planning requirements to implement BMP-based implementation requirements) that are expected to achieve the water quality results specified by the wasteload allocations. The wasteload allocations were incorporated by reference to ensure that, ultimately, implementation of the BMP-based WQBELs achieve specified water quality results as anticipated. The State Water Board does not conclude that the implementation of BMP-based WQBELs alone may be consistent with the assumptions and requirements of the applicable wasteload allocations; therefore the State Water Board includes compliance with applicable wasteload allocations by the applicable TMDL compliance deadline as a “back stop” requirement to ensure consistency with the assumptions and requirements of the TMDL.</p>
	CASQA1-2	<p>The Small MS4 General Permit and Proposed Amendment should refer to “compliance” when referencing a permit provision and “attainment” when referencing a TMDL.</p> <p>Recommendation</p>	<p>The State Water Board concurs. The proposed permit has been modified to reflect this comment.</p>

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	CASQA1-2 (Con't)	Conduct a global search of the Small MS4 General Permit and Proposed Amendment to identify when the terms "compliance" and "attainment" are used and modify the terms, as needed, to ensure that they are used consistently, and that "compliance" is only used when specifically referencing a permit provision.	
	CASQA1-3	<p>Federal law does not require MS4 Permittees to strictly comply with water quality standards or the associated WLAs of TMDLs.</p> <p>Further, in those instances where TMDLs will be incorporated into the Small MS4 General Permit, the State Water Board should be reminded that federal law does not require MS4s to strictly comply with water quality standards or the associated WLAs of those TMDLs.⁷ Any TMDL-related compliance requirement in the Small MS4 General Permit is a "true choice" by the State Water Board, constituting an unfunded state mandate.</p> <p>Recommendation Delete Finding 40</p>	<p>In precedential State Water Board Order WQ 2015-0075, the State Water Board states the following regarding requirements to comply with TMDL wasteload allocations:</p> <p>"Under the federal regulations implementing the Clean Water Act, effluent limitations in NPDES permits developed to achieve water quality standards must be consistent with the assumptions and requirements of any available wasteload allocation for the discharge. [Footnote: 40 C.F.R. § 122.44(d)(1)(vii)(B)]. In addition, the Porter-Cologne Act requires that waste discharge requirements implement any relevant water quality control plans,[Footnote: Wat. Code, § 13263, subd. (a).] including TMDL requirements that have been incorporated into the water quality control plans. . . .</p> <p>During the State Water Board development of Order WQ 2015-0075, permittee petitioners stated that there are no requirements under federal law for incorporation of TMDL requirements into an MS4 permit and that the inclusion of the requirements in Part VI.E and in Attachments L through Attachment R was therefore at the discretion of the Los Angeles Water Board. . . .</p> <p>Answering the question of whether the Los Angeles Regional Water Quality Control Board was required under federal law to strictly require TMDL compliance through the Los Angeles MS4 Order is a largely irrelevant exercise because the State Water Board has already reaffirmed in its water quality order that the Water Boards will continue to require water quality standards compliance in MS4 permits. Given the regulatory aspect of TMDLs, and that each set of dischargers have been named per each wasteload allocation to obtain the total reductions,, municipal storm water dischargers have the regulatory obligation to comply with water</p>

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	CASQA1-3 (Con't)		<p>quality standards implemented through this permit. In large urbanized areas pollutants in storm water constitute a significant share of the impairment; other dischargers would be disproportionately burdened if MS4s were not held to their allocations.</p> <p>Although not directly related to the above discussion, the State Water Board also notes that USEPA, in its storm water and TMDL implementation guidance documents (discussed in more detail below) assumes that MS4 permits must incorporate effluent limitations consistent with the assumptions and requirements of relevant wasteload allocations. [Full footnote omitted; see USEPA, Memorandum, "Revisions to the November 22, 2002 Memorandum 'Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs,' " (Nov. 26, 2014).] To the extent the TMDL provisions of the Clean Water Act and the federal regulations could be read to preclude mandatory incorporation of wasteload allocations into an MS4 permit, effluent limitations consistent with those wasteload allocations should nevertheless be required under Clean Water Act section 402, subsection (p)'s direction that the MS4 permit shall require "such other controls" as the permitting authority determines "appropriate for the control of such pollutants." [Footnote: 33 U.S.C. § 1342(p)(3)(B)(iii). See, e.g., State Water Board Orders WQ 91-03, WQ 91-04, WQ 98-01, WQ 99-05, WQ 2001-15.] Finally, for TMDLs incorporated into water quality control plans, the implementation plan associated with the TMDL applies to all dischargers named, including MS4 permittees, and the MS4 permits must be consistent with the direction in the water quality control plan. [Footnote: Wat. Code, § 13263, subd. (a); see also State Water Res. Control Bd. Cases (2006) 136 Cal. App. 4th 674, 730 (noting the obligation of the water boards to follow the program of implementation included in a water quality control plan).]</p> <p>Consistent with the above noted precedential decision and USEPA guidance documents, the State Water Board is requiring that the applicable dischargers come in attainment with the wasteload allocation implemented through this Order.</p>

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	CASQA1-3 (Con't)		<p>The proposed order incorporates a full discussion titled “Unfunded Mandates Considerations Specific to TMDL Requirements in the Order” on pages 56-59 of the Fact Sheet. The State Water Board refers commenters to that discussion.</p> <p>No revisions will be made to the proposed permit amendment in response to this comment.</p>
	CASQA1-4	<p>Include Reciprocating Language within the Effluent Limitations and Receiving Water Limitations that Cross References the TMDL Provisions.</p> <p>C. EFFLUENT LIMITATIONS</p> <p>1. <u>Technology Based Effluent Limitations:</u> Permittees shall implement controls as required by this Order to reduce the discharge of pollutants from their MS4s to waters of the U. S. to the MEP.</p> <p>2. <u>Effluent Limitations:</u> This Order establishes effluent limitations or permit conditions consistent with the assumptions and requirements of the applicable TMDL. Permittees shall additionally reduce the discharge of pollutants (1) to achieve TMDL waste load allocations (WLAs) established for discharges by the MS4s. Each Permittee shall comply with applicable effluent limitations or permit conditions as set forth in Attachment G, pursuant to the associated compliance schedules. [footnote: For TMDLs that are structured to utilize BMP-based requirements to attain a WLA, this language should be modified accordingly “In lieu of WQBELs, this Order establishes BMPs consistent with the assumptions and requirements of the applicable TMDLs....”] and (2) to comply with Special Protections for discharges to ASBS. [move this language to the Discharge Prohibitions or Receiving Water Limitations]</p> <p>2. Storm water discharges regulated by this Order shall not contain a hazardous substance in amounts equal to or in excess of a reportable quantity listed in 40 C.F.R. Part 117 or 40 C.F.R. Part 302. [move this language to the Discharge Prohibitions]</p>	<p>Although the State Water Board is not implementing the exact revisions recommended by this commenter, the State Water Board concurs that revisions to the proposed effluent limitations and receiving water limitations will add clarity to permit requirements. In response to this comment, sections C and D of the Order are revised as follows:</p> <p>“Section C. Effluent Limitations</p> <p>Permittees shall implement controls as required by this Order to reduce the discharge of pollutants from their MS4s to waters of the U.S. to the MEP. Permittees shall additionally reduce the discharge of pollutants (1) to achieve <u>applicable</u> TMDL wasteload allocations (WLAs) established for discharges by the MS4s <u>in accordance with Sections E.15.a and F.5.i.1. of this Order</u> and (2) to comply with the Special Protections for discharges to ASBS <u>in accordance with Section E.4 of this Order.</u>”</p> <p>And</p> <p>“Section D. Receiving Water Limitations</p> <p>[...New paragraph at end of section]</p> <p><u>A Permittee’s full compliance with the applicable requirements and deadlines in Attachment G for a specific pollutant and water body, including the requirement to demonstrate attainment of the applicable wasteload allocation in accordance with sections E.15.a or F.5.i.1 of this Order, is deemed to constitute compliance with this section’s requirement for discharges not to cause or contribute to an exceedance of water quality standards for that specific pollutant and water body.</u>”</p>

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	CASQA1-4 (Con't)	<p>Modify Provision D as follows:</p> <p>D. RECEIVING WATER LIMITATIONS</p> <p>... The Permittee shall comply with Receiving Water Limitations through timely implementation of control measures/BMPs and other actions to reduce pollutants in the discharges and other requirements of this Order including any modifications. The storm water program shall be designed to achieve compliance with Receiving Water Limitations. If exceedance(s) of water quality objectives or water quality standards persist notwithstanding implementation of other storm water program requirements of this Order <u>including the BMPs designed to comply with the TMDLs as set forth in Attachment G</u>, the Permittee shall assure compliance with Receiving Water Limitations by complying with the following procedure</p>	
	CASQA1-5	<p>The Small MS4 General Permit Should Allow the Permittees to Utilize Compliance Schedules for TMDLs.</p> <p>Recommendation</p> <ul style="list-style-type: none"> • State Water Board staff should work with the Regional Water Boards and affected stakeholders to determine if there is any regulatory flexibility for extension of final attainment dates consistent with any particular TMDL, or pollutant in a TMDL, prior to the adoption of Attachment G. • Amend the General Permit to allow Phase II MS4s the ability to prepare a watershed management plan in lieu of immediate compliance with WLAs in TMDLs. • Modify the language for Provisions E.15.b./ F.5.i.2 as follows: In some cases, Attachment G includes dates that fall outside the term of this Order. Compliance <u>Attainment</u> dates that have already passed are enforceable on the effective date of this Order. Permittees may request a time schedule order (TSO) or <u>propose a compliance schedule</u> where a final TMDL attainment <u>compliance</u> deadline is past. <u>Attainment</u> Compliance dates that exceed the term of this Order are included for reference, and become enforceable in the event that this Order is administratively extended. <u>Within six months of notification from the Permittee that a TSO or compliance schedule is needed, a Permittee shall submit a formal request. Between a Permittee's request and timely approval of the</u> 	<p>The provisions in the permit have been revised in response to comments that permittees subject to TMDLs with past compliance deadlines at the effective date of this amendment will be allowed to request a compliance schedules, through a Regional Water Board-issued time schedule order, to meet the TMDL requirements in Attachment G of this permit. The State Water Board recognizes that small traditional and non-traditional MS4 permittees are subject to TMDL requirements for the first time with this permit amendment and some of the TMDLs have past or fast-approaching deadlines. However, the State Water Board does not concur with the commenters that the Board has the flexibility under applicable law to allow permittees to obtain in-permit compliance schedules to extend past deadlines. In support of their statements, commenters point in particular to State Water Board Resolution 2008-0025, Policy for Compliance Schedules in NPDES Permits (Compliance Schedule Policy). By its terms, the Compliance Schedule Policy applies only to permits "that must comply with Clean Water Act section 301(b)(1)(C)" (Res. 2008-0025, §2), a section inapplicable to MS4 permits in accordance with Clean Water Act section 402(p)(3)(B). Regardless, the Compliance Schedule Policy states that a compliance schedule in an NPDES permit for a TMDL "cannot, under any circumstances, exceed the maximum length for compliance schedules or implementation schedules contained in the TMDL implementation plan." (Res. 2008-0025, § 6)c)ii.) The MS4 Permit must</p>

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	CASQA1-5 (Con't)	<p><u>request, the Permittee will be deemed in compliance with Provisions C and D for the provisions that would be covered by that TSO or compliance schedule. A Permittee that is timely implementing a duly approved TSO or compliance schedule shall be deemed in compliance with Provisions C and D for the provisions covered by that TSO or compliance schedule.</u></p> <p><u>A Permittee requiring additional time to meet applicable requirements set forth in Attachment G that implements a "new, revised, or newly interpreted" water quality objective, as that term is defined in the Compliance Schedule Policy, may propose a compliance schedule. The Permittee's proposed compliance schedule shall include a justification satisfying the following criteria:</u></p> <p><u>a. Diligent efforts have been made to quantify pollutant levels in the discharge and the sources of the pollutant in the waste stream, and the results of those efforts;</u></p> <p><u>b. Source control efforts are currently underway or completed, including compliance with any pollution prevention programs that have been established;</u></p> <p><u>c. A proposed schedule for additional source control measures or waste treatment;</u></p> <p><u>d. Data demonstrating current treatment facility performance to compare against existing permit requirements, as necessary to determine which is the more stringent requirement to apply if a schedule of compliance is granted.</u></p> <p><u>e. The highest discharge quality that can reasonably be achieved until final compliance is attained;</u></p> <p><u>f. The proposed compliance schedule is as short as possible, given the type of facilities being constructed or programs being implemented, and industry experience with the time typically required to construct similar facilities or implement similar programs; and</u></p> <p><u>g. Additional information and analyses to be determined by the State Water Board or Regional Water Board on a case-by-case basis.</u></p> <p><u>If the Permittee requires additional time beyond a TMDL's final attainment date to meet the applicable requirements that do not implement a "new, revised, or newly interpreted" water quality objective</u></p>	<p>incorporate effluent limitations that are consistent with the assumptions and requirements of the applicable waste load allocations (40 C.F.R. § 122.44(d)(1)(vii)(B)) and must implement the basin plans into which the TMDL implementation plans are incorporated (Wat. Code, §§13263, subd. (a), 13377.) Further, in precedential Order WQ 2015-0075, the State Water Board found that final TMDL compliance deadlines should not be extended through permitting actions, as discussed at pages 55-56 of the revised Fact Sheet.</p> <p>The following revisions to the proposed permit amendment have been incorporated to alleviate some of the concern expressed by commenters:</p> <ol style="list-style-type: none"> 1. Change the effective date of this amendment to be six months following adoption of the amendment to provide permittees time to request a time schedule order or take other appropriate action to prepare for implementation of the TMDL requirements. 2. Add a provision allowing a Regional Water Board Executive Officer to make a determination that the particular regulatory language of a given TMDL allows for an extension of the deadline for attainment of the wasteload allocation. 3. State that it is not the intention of the State Water Board or the Regional Water Boards to take enforcement action against a permittee that: <ul style="list-style-type: none"> o Has requested a time schedule order and is implementing the requirements in Attachment G pending approval of the time schedule order, or o The Regional Water Board has initiated proceedings to revise the implementation schedule or other requirements of a TMDL and the permittee is implementing the requirements in Attachment G.

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	CASQA1-5 (Con't)	<p><u>as defined in the Compliance Schedule Policy, the Permittee may request a TSO pursuant to California Water Code section 13300 for the State Water Board's or Regional Water Board's consideration. A request for a TSO shall include sufficient information to demonstrate that the Permittee needs time to implement actions, such as designing and constructing facilities or implementing new or significantly expanded programs and securing financing, if necessary, to meet the applicable requirements. Such information may include the following:</u></p> <p><u>a. Data demonstrating the current quality of the MS4 discharge(s) in terms of concentration and/or load of the target pollutant(s) to the receiving waters subject to the TMDL;</u></p> <p><u>b. A detailed description and chronology of structural controls and source control efforts, since the effective date of the TMDL, to reduce the pollutant load in the MS4 discharges to the receiving waters subject to the TMDL;</u></p> <p><u>c. Justification of the need for additional time to achieve the requirements;</u></p> <p><u>d. A detailed time schedule of specific actions the Permittee will take in order to achieve the requirements;</u></p> <p><u>e. A demonstration that the time schedule requested is as short as possible, taking into account the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation(s); and</u></p> <p><u>f. If the requested time schedule exceeds one year, the proposed schedule shall include interim requirements and the date(s) for their achievement.</u></p>	
	CASQA1-6	<p>Consistent with Comment #1, each of the TMDLs within Attachment G should include language regarding the use of effluent limitations and/or permit conditions when referring to a requirement that must be met by the MS4s.</p> <p>Recommendation</p> <p>Include the following language within each one of the TMDLs that is implementing established WLAs (alternatively, this language could be included as an overall statement that is applicable to the entirety of</p>	<p>Additional permitting language has been added to Section E.15 and F.5.i. of the proposed permit to establish that Attachment G contains BMP-based WQBELs and other permit requirements. Regardless, the permit provisions state that permittees must demonstrate attainment of the wasteload allocations at the final attainment deadline. See response to comment CASQA1-8 regarding attainment determinations.</p>

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	CASQA1-6 (Con't)	Attachment G): <u>Effluent Limitations and/or permit conditions</u> <u>This TMDL includes effluent limitations and/or permit conditions consistent with the assumptions and requirements of the applicable TMDL wasteload allocations (WLAs) established for discharges by the MS4s. The responsible Phase II Entities shall implement BMPs that will attain the applicable effluent limitations and/or permit conditions by the Final Compliance Deadline, approved compliance schedule, or in accordance with an approved Time Schedule Order, and maintain such attainment thereafter.</u>	
	CASQA1-7	Each of the TMDLs within Attachment G should directly incorporate the WLAs established for discharges by the MS4s. Recommendation Include the WLAs (and any associated footnotes, clarifications, etc.) established for discharges by the MS4s directly within Attachment G as effluent limitations and/or permit conditions.	See response to comment CASQA 1-8, below.
	CASQA1-8	The Proposed Amendment must include language that identifies the TMDL compliance pathways. Recommendation <i>[Comment had extensive footnotes, these are not included here. Please see Comment Letter]</i> <ul style="list-style-type: none"> • Ensure that the incorporation of effluent limitations and/or permit conditions (numeric or narrative) in the Proposed Amendment is consistent with each one of the TMDLs. • Include the following language within each one of the TMDLs or as a permit provision that is applicable to all of the TMDLs in Attachment G: <u>Demonstration of Compliance with effluent limitations and/or permit conditions Compliance with the effluent limitations and/or permit conditions in Provision C.2 of this Order associated with the applicable WLAs, on or after the final attainment deadline, may be demonstrated by any one of the following methods:</u> <ol style="list-style-type: none"> <u>1. Implementation of the BMPs consistent with an approved watershed plan or similar implementation plan/schedule; OR</u> <u>2. Receiving water monitoring and/or other information, as authorized by the Regional Water Board Executive Officer, that reasonably demonstrates attainment of applicable effluent limitations in the receiving</u> 	<p>The purpose of TMDL implementation in the permit is for the Discharger to comply with the water quality results specified in the TMDL wasteload allocations in order to attain water quality standards in impaired receiving waters. In Attachment G, the State Water Board has established BMP-based implementation requirements (including planning requirements to implement BMP-based implementation requirements) that are expected to achieve the water quality results specified by the wasteload allocations. The wasteload allocations were incorporated by reference to ensure that, ultimately, implementation of the BMP-based WQBELs achieve specified water quality results as anticipated. The State Water Board does not conclude that the implementation of BMP-based WQBELs alone may be consistent with the assumptions and requirements of the applicable wasteload allocations; therefore the State Water Board includes compliance with applicable wasteload allocations by the applicable TMDL compliance deadline as a “back stop” requirement to ensure consistency with the assumptions and requirements of the TMDL.</p> <p>The State Water Board nevertheless agrees with the comments that establishing criteria for how a permittee may demonstrate attainment with the wasteload allocations will provide additional clarity on permit requirements. To address this comment, the State Water Board will</p>

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	CASQA1-8 (Con't)	<p><u>water (discharges from a Permittee's MS4 did not cause or contribute to an exceedance in the receiving water); OR</u></p> <p><u>3. Attainment of the applicable effluent limitations within the discharge; OR</u></p> <p><u>4. Representative outfall sample results for validated human DNA markers that demonstrate absence (below analytical detection limits or other established thresholds) of anthropogenic waste in MS4 discharges; OR</u></p> <p><u>5. Demonstration that exceedances of the receiving water limitations in the receiving water are due to loads from natural sources and pollutant loads from the MS4s are not causing or contributing to the exceedances; OR</u></p> <p><u>6. Demonstration that no discharges from the Permittee's MS4 to the applicable water body occurred during the relevant time period; OR</u></p> <p><u>7. Demonstration that the pollutant load reductions for the MS4 discharges are greater than or equal to the effluent limitations; OR</u></p> <p><u>8. Timely implementation of a Regional Water Board-approved compliance schedule for meeting the applicable WLAs.</u></p> <p><u>In addition, the State Water Board and Regional Water Boards shall further consider other factors as described by the specific TMDLs.</u></p>	<p>modify language in Sections E.15.a and F.5.i.1 of the Order (TMDL Compliance Requirements), as shown below. Instead of incorporating each TMDL-specific wasteload allocation by reference in Attachment G, the revisions reference the wasteload allocations in the order itself, along with specific criteria for demonstrating attainment of those wasteload allocations. Attachment G sets out the BMP-based WQBELs and other permit requirements, and the final compliance deadline at which permittees must demonstrate attainment of the wasteload allocations per section E.15.a (for traditional MS4 permittees) or F.5.i.1 (for non-traditional MS4 permittees).</p> <p><u>Language modifying Sections E.15 and F.5.i (redline/strikeout omitted for readability, please see revised Order for specific changes)</u></p> <p>Attachment G contains a list of TMDL-specific, BMP-based water quality based effluent limitations (WQBELs) and other permit requirements, applicable to identified permittees, consistent with the assumptions and requirements of the applicable wasteload allocations of the TMDLs.</p> <p>E.15.a. Permittees shall comply with the requirement in Section C.1 to reduce the discharge of pollutants to achieve applicable TMDL wasteload allocations as follows:</p> <ol style="list-style-type: none"> 1) Prior to the deadline to attain the final wasteload allocation, a permittee is deemed in compliance with the requirement in Section C.1 to reduce the discharge of pollutants to achieve applicable TMDL wasteload allocations, if the permittee is timely implementing all BMP-based WQBELs and other requirements specified in Attachment G for that TMDL. The permittee may alternatively make a demonstration in accordance with section E.15.a.2 below. 2) On or after the deadline to attain the final wasteload allocation, a permittee is deemed in compliance with the requirement in Section C.1 to reduce the discharge of pollutants to achieve applicable TMDL wasteload allocations if the permittee meets one or more of the criteria in subsections a-g below. For purposes of this section only, the wasteload allocations specified in the applicable TMDLs (as listed in the Fact Sheet) are incorporated by reference.

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	CASQA1-8 (Con't)		<p>a) Receiving water monitoring and analysis by the permittee or other responsible parties under the TMDL, as approved by the Regional Water Board or its designee, demonstrates attainment of the applicable receiving water limitation in the waterbody at or immediately downstream of the permittee's discharge; or</p> <p>b) Receiving water monitoring does not demonstrate attainment of the applicable receiving water limitation in the waterbody, but the permittee demonstrates, through an approach approved by the Regional Water Board or its designee, that exceedances of the receiving water limitations for the receiving water are due to loads from natural sources or other sources and pollutant loads from the permittee are not causing or contributing to the exceedances; or</p> <p>c) Where the wasteload allocation is expressed as a concentration, sampling of the permittee's discharge, as approved by the Regional Water Board or its designee, indicates that the discharge has attained the applicable wasteload; or</p> <p>d) Where a mass-based wasteload has been allocated to an individual or jointly to a group or is expressed as a percent reduction in load, the permittee demonstrates, through an approach approved by the Regional Water Board or its designee, that the permittee's discharge is attaining the individual or appropriate share of the joint allocation or the percent reduction; or</p> <p>e) Where a wasteload allocation is expressed as the number of allowable exceedance days, the permittee demonstrates, through an approach approved by the Regional Water Board or its designee, that the permittee's discharge conforms to the allowable exceedance days;</p> <p>f) The permittee demonstrates, in a manner approved by the Regional Water Board or its designee, that no discharges, either directly or indirectly, from the permittee's MS4 to the applicable water body occurred during the relevant time period; or</p> <p>g) The permittee demonstrates the attainment of the wasteload allocation through other factors as described by the specific TMDL(s) and as approved by the Regional Water Board or its designee.</p> <p>3) Pursuant to Section D, a permittee deemed in compliance with</p>

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	CASQA1-8 (Con't)		<p>Section C.1 in accordance with subsections 1) and 2) of this section is also deemed in compliance with the Section D requirement to not cause or contribute to an exceedance of water quality standards for the specific pollutants and water bodies addressed.</p> <p>E.15.b. In some cases, Attachment G includes dates are given that fall outside the term of this Order. Compliance dates for BMP-based WQBELs and other permit requirements that exceed the term of this Order are included for reference, and become enforceable in the event that this Order is administratively extended.</p> <p>Wasteload allocation attainment dates that have already passed are enforceable on the effective date of this Order and have been assigned a due date of July 1, 2018.</p> <p>1) If the Regional Water Board Executive Officer makes a determination, on a case by case basis, that the language of a particular TMDL allows flexibility to extend a final deadline to attain a wasteload allocation, the State Water Board Executive Director may amend Attachment G to provide an extended deadline following public notice and comment.</p> <p>Where a final deadline to attain a wasteload allocation is past and the permittee has not demonstrated compliance as specified in Section E.15.a above, the permittee may seek a time schedule order pursuant to Water Code section 13300 from the Regional Water Board. Permittees may either individually request a time schedule order or may jointly request a time schedule order with all Permittees subject to the TMDL in Attachment G. Permittees may also request time schedule orders where the permittee has not timely complied with a BMP-based WQBEL or other permit requirement in Attachment G.</p> <p>A request to the applicable Regional Water Board for a time schedule order shall include the following information:</p> <p>a) Any available data demonstrating the current quality of the MS4 discharge(s) in terms of concentration and/or load of the target pollutant(s) to the receiving waters subject to the TMDL;</p> <p>b) A description and chronology of structural controls and source</p>

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	CASQA1-8 (Con't)		<p>control efforts carried out by the permittee since the effective date of the TMDL to reduce the pollutant load in the MS4 discharges to the receiving waters subject to the TMDL;</p> <p>c) Justification of the need for additional time to achieve the requirements;</p> <p>d) The specific actions the Permittee will take in order to meet the TMDL requirements and a time schedule of interim and final deadlines proposed to implement those actions. The actions will reflect the requirements specified for the TMDL in Attachment G;</p> <p>e) A demonstration that the time schedule requested is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the TMDL requirements.</p> <p>2) It is not the intention of the State Water Board or the Regional Water Boards to bring an enforcement action for non-attainment of the wasteload allocation where:</p> <p>a) A permittee is in compliance with a time schedule order's implementation requirements and compliance schedule;</p> <p>b) A permittee has in good faith requested a time schedule order from the Regional Water Board and is in compliance with all BMP-based WQBELs and other permit requirements of Attachment G, except the requirement to attain the applicable wasteload allocation by the final attainment deadline;</p> <p>c) A Regional Water Board has initiated proceedings to revise the TMDL to provide additional time for compliance or to modify TMDL wasteload allocations and the permittee is in compliance with all BMP-based WQBELs and other permit requirements in Attachment G, except the requirement to attain the applicable wasteload allocation by the final attainment deadline.</p>
	CASQA1-9	<p>The TMDL language and requirements should be consistent with the adopted Basin Plan Amendment.</p> <p>Specific examples of inconsistencies are included within Attachments A and B [Included in Comment Letter] and include the following TMDLs:</p> <ul style="list-style-type: none"> • TMDL for Fecal Indicator Bacteria in the Santa Maria River Watershed <ul style="list-style-type: none"> o Requires the identification of additional milestones, measurable 	<p>The implementation language in Attachment G is consistent with the TMDLs. In some cases, as noted in this comment, the implementation requirements do not represent verbatim the language of the TMDL. Federal law does not require that an NPDES permit incorporating requirements based on a TMDL incorporate the TMDL language exactly as is. The requirement under the federal regulations is that "effluent limits</p>

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	CASQA1-9 (Con't)	<p>goals, measures, and targets</p> <ul style="list-style-type: none"> o Requires a quantitative analysis to demonstrate reasonable assurance o Requires the establishment of interim targets and interprets that they are a measure of compliance <ul style="list-style-type: none"> • TMDL for Sediment in Morro Bay, Chorro Creek, Los Osos Creek, and the Morro Bay Estuary • TMDL for Toxicity and Pesticides in the Santa Maria River Watershed <ul style="list-style-type: none"> o See the comments previously provided in Attachment B [Included in Comment Letter] • Napa River Sediment TMDL and Habitat Enhancement Plan <ul style="list-style-type: none"> o Includes a number of inconsistencies with the adopted Basin Plan language • Napa River Pathogen TMDL <ul style="list-style-type: none"> o Includes specific measures pre-determined by Regional Water Board staff, not the MS4s. o Does not fully incorporate the collaborative monitoring effort <p>Recommendation Modify Attachment G TMDL language so that it is consistent with applicable Basin Plan(s) and other Phase I Permits that include the same TMDLs.</p>	<p>. . . are consistent with the assumptions and requirements of any available wasteload allocation for the discharge.” (40 C.F.R. § 122.44 (d)(1)(vii)(B); see also Memorandum, “Revisions to the November 22, 2002 Memorandum ‘Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs,’” issued by USEPA, November 26, 2014.) State Water Board staff has reviewed the examples in this Comment and has concluded that the requirements are consistent with the requirements and assumptions of the TMDL.</p> <p>In regard to the TMDLs for the Santa Maria River (bacteria and toxicity) and Morro Bay (sediment): Water Board staff contends that the inclusion of interim milestones and a quantifiable analysis that the BMPs implemented are expected to achieve the desired result are consistent with the assumptions and requirements of the TMDL. See also response to comment CW1-4, below.</p> <p>In regard to TMDLs for the Napa River, please see response to comments NCFC1-1 through NCFC1-5, below.</p>
	CASQA1-10	<p>Attachment G should recognize that participation in Regional Monitoring Programs is supported by the Phase II Permit and incorporate commensurate language.</p> <p>Recommendation</p> <ul style="list-style-type: none"> • Modify Provision E.13.b. as follows – Permittees shall implement any monitoring requirements assigned to them in Attachment G. <u>With Regional Water Board Executive Officer approval, the Permittees may participate in a regional monitoring program or other collective monitoring effort in lieu of some or all of the individual monitoring requirements specified within Attachment G.</u> The Regional Water Board Executive Officer may require additional monitoring, per Water Code 13383. <p>Include the following language within the TMDLs to provide the flexibility necessary if participating in regional monitoring:</p>	<p>Since the regional monitoring program referenced in this comment only applies to the Central Valley Region, it is not practicable to insert such language in the permit portion of the Order. Requirements in Attachment G pertaining to the TMDLs for the Central Valley Region allows for participation in the regional monitoring in lieu of any or all of the required monitoring). Therefore, the proposed permit has not been modified.</p>

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	CASQA1-10 (Con't)	<p>Region 5</p> <ul style="list-style-type: none"> • TMDL for Lower San Joaquin River – Diazinon and Chlorpyrifos & TMDL for Sacramento and San Joaquin Delta – Diazinon and Chlorpyrifos & TMDL for Sacramento and Feather Rivers - Diazinon and Chlorpyrifos <ul style="list-style-type: none"> o 1a. ...Conduct an assessment....<u>OR</u> o 1b....With Central Valley..... • TMDL for Lower San Joaquin River, San Joaquin River, Stockton DWSC – Organic Enrichment and Low Dissolved Oxygen <ul style="list-style-type: none"> o 1. ...By [Hard date: one year from the effective date]....<u>OR</u> o 2....With Central Valley..... • TMDL for the Delta – Methylmercury <ul style="list-style-type: none"> o 1a. ...The Permittees shall begin monitoring....<u>OR</u> o 1b....With Central Valley..... • TMDL for Clear Lake – Nutrients <ul style="list-style-type: none"> o 1. ...By [Hard date: 6 months from the effective date]....<u>OR</u> o 2....With Central Valley..... 	
Sonoma County Water Agency	SCWA1-1	<p>Requesting revisions to the Fact Sheet language regarding the Sonoma Creek Sediment TMDL.</p> <p>The Sonoma County Water Agency has been a voluntary participant with proactive storm water control efforts, including enrollment under the previous 2003 Small MS4 General Permit (Order 2003-0005-DWQ). The Sonoma County Water Agency owns and operates <u>approximately 2,000 linear feet of stream channel</u> its own roads and has some jurisdiction over stream crossings within its service area, the Sonoma Creek watershed. Therefore, the Agency participation is subject to the requirements of in the TMDL <u>will be limited to the property identified in its approved Storm Water Management Plan.</u></p>	<p>The additional proposed text in this comment regarding stream channel length illustrates Sonoma County Water Agency's jurisdictional areas within the Sonoma Creek watershed, and Sonoma County Water Agency is subject to the requirements of the TMDL, within its jurisdictional areas. Therefore, the permit Fact Sheet has been revised as follows:</p> <p>"The Sonoma County Water Agency has been a voluntary participant with proactive storm water control efforts, including enrollment under the previous 2003 Small MS4 permit (Order 2003-0005-DWQ). The Sonoma County Water Agency owns and operates <u>approximately 2,000 linear feet of stream channel</u> its own roads and has some jurisdiction over stream crossings within its service area, the Sonoma Creek watershed. Therefore, the Agency is subject to the requirements of the TMDL, <u>as expressed by the requirements in Attachment G.</u>"</p>
	SCWA1-2	<p>Requesting revisions to the Fact Sheet language regarding the Sonoma Creek Sediment TMDL.</p> <p>The TMDL-related requirements in this Order are based on the TMDL</p>	<p>The State Water Board concurs that the Sonoma County Water Agency has limited exposure and/or responsibility regarding design, construction and maintenance of rural roads. The permit Fact Sheet has been revised to address this concern by excluding the Sonoma County Water Agency</p>

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	SCWA1-2 (Con't)	Implementation Plan. To implement the roads and stream crossings allocation, the TMDL Implementation Plan establishes a performance standard for the design, construction, and maintenance of rural roads to minimize road-related sediment delivery to streams. The Implementation Plan also requires entities responsible for paved roads, such as the City and County of Sonoma and Sonoma County Water Agency , to: (1) adopt and implement best management practices for maintenance of unimproved (dirt/gravel) roads, (2) conduct a survey of stream-crossings associated with paved public roadways, (3) develop a prioritized implementation plan for repair and/or replacement of high priority crossings/culverts to reduce road related erosion, and (4) protect stream-riparian habitat conditions.	from this requirement.
	SCWA1-3	<p>Requesting revisions to the Fact Sheet regarding the Sonoma Creek Pathogen TMDL.</p> <p>The Sonoma County Water Agency has been a voluntary participant with early storm water control efforts, including enrollment under the previous Small MS4 permit (Order 2003-0005- DWQ). The Sonoma County Water Agency owns and operates approximately <u>2,000 linear feet of stream channel</u> its own roads and has some jurisdiction over stream crossings within its service area. The Agency is also enrolled under this Order and, as such, is subject to the requirements of the TMDL. Therefore, the <u>Sonoma County Water Agency participation in the TMDL will be limited to the property identified in its approved Storm Water Management Plan.</u></p> <p>Phase II Entities: The San Francisco Water Board has determined that the City of Sonoma, <u>and</u> the County of Sonoma, and the Sonoma County Water Agency, Traditional Small MS4 permittees, are sources of "municipal runoff" subject to this Order and are responsible for implementing the requirements of this TMDL.</p>	See responses to comments SCWA1-1 and SCWA1-2.
	SCWA1-4	<p>Requesting revisions to the Fact Sheet regarding the Sonoma Creek Pathogen TMDL.</p> <p>The TMDL-related requirements in this Order are derived from the TMDL</p>	The State Water Board concurs that Sonoma County Water Agency has limited exposure for municipal storm water runoff. The permit Fact Sheet has been revised to address the first portion of this comment.

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	SCWA1-4 (Con't)	<p>Implementation Plan that was adopted with the TMDL. The Implementation Plan for the pathogen TMDL requires parties responsible for municipal runoff (i.e., City and County of Sonoma and the Sonoma County Water Agency) to comply with storm water management plans previously developed. The municipalities' management plans must be updated and/or amended as necessary to include actions that will lead to compliance with the requirements of this Order. The management plans must address: (1) public participation and outreach, (2) pet waste management, (3) illicit sewage discharge detection and elimination to reduce and eliminate fecal coliform discharges to Sonoma Creek, and (4) pollution prevention strategies. The Implementation Plan also requires the City and County of Sonoma and Sonoma County Water Agency to participate in evaluation of E. coli concentration trends in Sonoma Creek and its tributaries and to report annually on water quality monitoring results and progress made on implementation of human and animal runoff reduction measures. The implementation actions are expected to build on existing programs. The Permittee must report on its implementation actions in the Annual Report.</p> <p>For the Sonoma County Water Agency, the TMDL implementation requirements of this Order are incorporated by reference to the Storm Water Management Plan approved under the previous 2003 Storm Water Permit (Order 2003-0005-DWQ). The Sonoma County Water Agency must comply with the compliance dates established in its previously approved Storm Water Management Plans.</p>	<p>The TMDL implementation requirements in Attachment G require Sonoma County Water Agency to implement actions specified in their approved Storm Water Management Plan in accordance with the TMDL-related compliance dates. The Regional Water Board Executive Officer may issue a time schedule order for Sonoma County Water Agency to attain the WLA in the shortest practicable time; see response to comment SCWA1-5. Therefore, the permit Fact Sheet has not been revised per the last paragraph of this comment.</p>
	SCWA1-5	<p>Requesting revisions to the requirements in Attachment G for implementing the Sonoma Creek Sediment TMDL.</p> <p>Requirements for Sonoma County Water Agency for Implementing TMDL</p> <p>1. The Sonoma County Water Agency shall continue to implement actions as specified in the Storm Water Management Plan approved under the prior 2003 General Permit including actions to attenuate peak flows and durations from new and redevelopment projects. Implementation requirements for implementation actions are</p>	<p>The Sonoma County Water Agency is subject to the requirements of the TMDL. Therefore, Attachment G has been revised, as follows, to address this comment.</p> <p>Requirements for Sonoma County Water Agency for Implementing TMDL</p> <p>1. The Sonoma County Water Agency shall continue to implement actions as specified in the Storm Water Management Plan approved under the prior 2003 General Permit including actions to attenuate peak flows and durations from new and redevelopment projects. Implementation requirements for implementation actions are</p>

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	SCWA1-5 (Con't)	<p>incorporated herein by reference. The Sonoma County Water Agency may propose amendments to those Implementation Actions by submitting an updated Storm Water Management Plan to the Regional Water Board.</p> <p>2. Report progress on implementation of sediment reduction measures in the Annual Report.</p> <p>The Load Allocation (LA) and Waste Load Allocation (WLA) specified in the Fact Sheet are incorporated by reference. The final compliance deadline for the WLA and LA is not specified in the TMDL.</p> <p>Attenuation of peak flows and durations from new and redevelopment projects: Applicable Immediately</p>	<p>incorporated herein by reference. The Sonoma County Water Agency may propose amendments to those Implementation Actions by submitting an updated Storm Water Management Plan to the Regional Water Board.</p> <p>2. Report progress on TMDL implementation of sediment reduction measures in the Annual Report.</p> <p>The Load Allocation (LA) and Waste Load Allocation (WLA) specified in the Fact Sheet are incorporated by reference. The final compliance deadline for the WLA and LA is not specified in the TMDL. <u>Therefore, Sonoma County Water Agency shall propose a timeline to attain the WLA in the shortest practicable time, subject to Regional Water Board Executive Officer approval. Attainment of the WLA shall be demonstrated as specified in Section E.15.a.2/Section F.5.i.1.b of this Order.</u></p> <p>Attenuation of peak flows and durations from new and redevelopment projects: Applicable Immediately"</p>
	SCWA1-6	<p>Requesting revisions to the requirements in Attachment G for implementing the Sonoma Creek Pathogen TMDL.</p> <p>Requirements for Sonoma County Water Agency for Implementing TMDL</p> <p>The Sonoma County Water Agency shall:</p> <ol style="list-style-type: none"> 1. Continue to implement actions as specified in the Storm Water Management Plan approved under the 2003 General Permit. 2. Review annually and update as necessary the TMDL compliance actions to include specific measures to reduce pathogen loading. 3. Report progress on implementation of pathogen reduction measures in the Annual Report. <p>The wasteload allocations identified in the Fact Sheet of this Order are incorporated by reference. A final compliance deadline for compliance with the WLA is not specified in the TMDL.</p>	<p>The Sonoma County Water Agency is subject to the requirements of the TMDL. Therefore, Attachment G has been revised, as follows, to address this comment..</p> <p>Requirements for Sonoma County Water Agency for Implementing TMDL</p> <p>The Sonoma County Water Agency shall:</p> <ol style="list-style-type: none"> 1. Continue to implement actions as specified in the Storm Water Management Plan approved under the 2003 General Permit. 2. Review annually and update <u>as necessary the TMDL attainment compliance actions, as necessary to include specific measures to reduce pathogen loading.</u> 3. Report progress on <u>TMDL implementation of pathogen reduction measures in the Annual Report.</u> <p>The wasteload allocations identified in the Fact Sheet of this Order are incorporated by reference. A final compliance deadline for compliance with the WLA is not specified in the TMDL. Therefore, <u>Sonoma County Water Agency shall propose a timeline to attain the WLA in the shortest practicable time, subject to Regional Water</u></p>

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	SCWA1-6 (Con't)		<u>Board Executive Officer approval. Attainment of the WLA shall be demonstrated as specified in Section E.15.a.2/Section F.5.i.1.b of this Order.</u>
Department of the Navy	NAVY1-1	Recommending that the term "'Wasteload Allocation (WLA)" be replaced with "Water Quality Based Effluent Limitations (WQBEL)" when referring to a numeric or best management practices (BMPs)-based effluent limitation that must be met by the MS4s. The Small MS4 General Permit should include WQBELs to ensure that WLAs will be incorporated into the Small MS4 General Permit with the flexibility that is inherent in WQBELs expression. In the context of MS4 discharges, WQBELs in NPDES permits may be expressed in the form of either numeric limitations or, where authorized by the applicable basin plan, BMPs (40 CFR I 22.44(k))."	See response to comment CASQA1-1
	NAVY1-2	Requesting that "each of the TMDLs within Attachment G should include language regarding the use of WQBELs when referring to a numeric or BMP-based effluent limitation that must be met by the MS4s. Suggested language to be included with each one of the TMDLs that is implementing established WLAs, or as an overall statement that is applicable to the entirety of Attachment G, follows: "Water Quality Based Effluent Limitations (WQBELs) – This TMDL includes WQBELs consistent with the assumptions and requirements of the applicable TMDL wasteload allocations (WLAs) established for discharges by the MS4s. The responsible Phase II Entities shall implement BMPs that will attain the applicable WQBELs by the Final Compliance Deadline, approved compliance schedule, or in accordance with an approved Time Schedule Order, and maintain such attainment thereafter.'"	See response to comment CASQA1-8
	NAVY1-3	Requesting "that the Naval Base Ventura County (the Naval Base) TMDL classifications be revised under the current draft to accurately reflect appropriate geographic locations and permit coverage. The Naval Base is comprised of three distinct locations, two of which are incorrectly listed as subject to Calleguas Creek TMDLs. The first location, the Naval Base Port Hueneme, is not in the Calleguas Watershed and therefore does not discharge to Calleguas Creek. As such, the Naval	The State Water Board concurs that the Naval Base Ventura County Port Hueneme is not located in the Calleguas Creek Watershed. All reference to the Naval Base Ventura County Port Hueneme has been removed from Attachment G. The State Water Board will direct staff to follow up with Regional Water Board staff to review submitted information and conduct the necessary

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	NAVY1-3 (Con't)	Base Port Hueneme should not be included in Attachment G or the Fact Sheet. The second location, Naval Base Point Mugu does not meet the definition of a non-traditional Phase II MS4 and should be issued a permit waiver. The Naval Base has submitted two written requests to the Los Angeles Regional Water Quality Control Board regarding this issue. See Enclosure 1 (letter from 23 Mar 2015) and Enclosure 2 (Letter from 21 Jun 2017)."	site visits to address the submitted waivers for the Naval Base Ventura County Point Mugu..
	NAVY1-4	Irrespective of the Naval Base Point Mugu waiver, the Navy requests "that the inclusion of the Naval Base as a Phase II entity be reconsidered based on the most recent TMDL monitoring data. TMDL monitoring data for 2014-2015 and 2015-2016 document that final WLAs are being achieved in reaches 1 and 2 for all Toxicity, OC Pesticide, and Metals TMDLs constituents with exception of Chlorpyrifos and DDE. The data also show that the Chlorpyrifos and DDE WLA exceedances are likely due to upstream agricultural discharges. Consequently, the Naval Base should be removed as Phase II entity assigned the Toxicity, OC Pesticide, and Metals TMDLs."	While water quality has improved, Calleguas Creek Reach 1 (Mugu Lagoon) and Calleguas Creek Reach 2 remain on the Clean Water Act Section 303(d) list of impaired waters for metals and organics and TMDLs are in place to ensure that water quality is restored and maintained. Naval Base Ventura County was found to be a source of metals and organics during TMDL development (see the TMDL Technical Report for the TMDL for Metals and Selenium in Calleguas Creek at http://www.waterboards.ca.gov/losangeles/board_decisions/basin_plan_amendments/technical_documents/bpa_44_2006-012_td.shtml). MS4 permittees were assigned WLAs in the TMDL, and permits must include provisions consistent with the assumptions and requirements of the TMDL. As such, until such time as the waiver request is approved by the Regional Water Board, it is appropriate for Naval Base Ventura County to remain subject to Attachment G.
	NAVY1-5	The Naval Base is listed under the trash TMDL for the Revlon Slough and Beardsley Wash, Reaches four (4) and five (5) respectively of the Calleguas Watershed. Discharges from the Naval Base Point Mugu only enter Reach one (1) and two (2) of the Calleguas Watershed, therefore Naval Base should be removed as Phase II entity assigned to this TMDL.	Navy Base Ventura County does not discharge to Revlon Slough or Beardsley Wash and will be removed from this TMDL in Attachment G.
City of Escalon	ESC1-1	Request Removing the City of Escalon from Attachment G. Escalon is not assigned a WLA in the San Joaquin River Dissolved Oxygen TMDL [...]As recently as 2014, the Central Valley Regional Water Quality Control Board determined that Escalon "is not subject to a TMDL" and does "not discharge to a CWA Section 303(d) listed water body with urban runoff listed as the source." (Exhibit 1, Pamela Creedon,	The State Water Board does not agree. The San Joaquin River Dissolved Oxygen TMDL assigned wasteload allocations to all NPDES permitted dischargers within the source area for loads of oxygen demanding substances and their precursors. This source area is defined in the Basin Plan as the San Joaquin River watershed that drains downstream of Friant Dam and upstream of the confluence of the San Joaquin River and Disappointment Slough (with a few exceptions). This source area includes the city of Escalon. Therefore Escalon is assigned a wasteload

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	ESC1-1 (Con't)	<p>Clarification on Water Quality Monitoring Tiers, NPDES General Permit for Waste Discharge Requirements for Storm Water Discharges From Small Municipal Separate Storm Sewer Systems, June 12, 2014.) <u>{Pages 6-10 of comment letter}</u></p> <p>It is inappropriate to subject Escalon to the San Joaquin River Dissolved Oxygen TMDL without evidence that the assumptions and data used to develop the allocation and implementation actions are scientifically sound as applied to Escalon.</p>	<p>allocation in the San Joaquin River TMDL, and should not be removed from being listed under this TMDL in Attachment G. Central Valley Water Board staff determined that the 12 June 2014 staff letter cited by the commenter was in error in stating that Escalon was not subject to a TMDL. Keeping Escalon listed under this TMDL in Attachment G is consistent with the Central Valley Water Board's recently adopted Region-wide Municipal Stormwater General Permit, which also included the City of Escalon in this TMDL. The environmental documentation supporting the adoption of this TMDL demonstrates that municipal stormwater was among the NPDES permitted sources considered in the analysis supporting the TMDL and assigned wasteload allocations.</p>
	ESC1-2	<p>Requiring immediate compliance with an attainment deadline after the deadline expired is an abuse of discretion [...]<i>It is inappropriate to require Escalon to comply immediately with a wasteload allocation whose attainment deadline has passed when that allocation has never been assigned to Escalon, and Escalon has never had an opportunity or obligation to attain that allocation.</i></p> <p>Requested Revision 1: Remove "City of Escalon" from Attachment G.</p>	<p>See response to comment ESC1-1 regarding the applicability of the wasteload allocation. The State Water Board agrees that this is the first time this wasteload allocation has been assigned to a permit regulating the City of Escalon's MS4, and that the attainment deadline has passed. Nevertheless, the State Water Board does not agree that requiring immediate demonstration of attainment of the wasteload allocation represents an abuse of discretion because the applicable law does not give the Water Boards flexibility to give the City of Escalon a compliance schedule within the permit terms. The State Water Board responds to this issue in greater detail under Comment CASQA1-5.</p>
	ESC1-3	<p>Requested revision: <i>If Escalon is not removed from Attachment G, include a footnote beside "City of Escalon" and note stating, "Escalon is exempt from the requirement to conduct a Section E.14, Program Effectiveness Assessment on the BMPs to control the discharge of oxygen demanding substances and precursors."</i> {emphasis added}</p>	<p>The State Water Board does not agree. The commenter has not included any rationale why this one discharger should be excluded from the requirement for an effectiveness assessment. Program effectiveness assessment is necessary to determine if the discharger's actions are effective and to make any adjustments to ensure the discharge of oxygen demanding substances and their precursors are being reduced to the maximum extent practicable.</p>
	ESC1-4	<p>[...] the Regional Board determined that Escalon is not subject to a TMDL and does not discharge to a CWA Section 303(d) listed water body with urban runoff listed as the source. (Exhibit 1){<i>Pages 6-10 of comment letter</i>} On this basis, Escalon has been exempt from monitoring requirements in the past.</p> <p>Requested revision: <i>if Escalon is not removed from Attachment G,</i></p>	<p>The State Water Board does not agree. The commenter has not included any rationale for why this one discharger should be excluded from these monitoring requirements. Monitoring and/or assessment is necessary to determine if the discharger's actions are effective and to make any adjustments to ensure the discharge of oxygen demanding substances and their precursors are being reduced to the maximum extent practicable.</p>

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	ESC1-4 (Con't)	include a footnote beside "City of Escalon" and a note stating "Escalon is not required to implement the Monitoring Provisions." [emphasis added]	
	ESC1-5	<p>If not removed from Attachment G, allow Escalon to show it should be removed based on monitoring data</p> <p>In light of the presentation above, Escalon also respectfully requests that, if it is not removed from Attachment G, and if it is required to conduct monitoring, that Escalon will be eligible for removal from Attachment G if the results demonstrate its discharges have no reasonable potential to cause or contribute to a negative impact on the dissolved oxygen / organic enrichment impairment. [...]</p> <p>Requested revision: <i>if Escalon is not removed from Attachment G and is required to implement the "Monitoring Provisions" include a footnote beside "City of Escalon" and a note stating that "The Regional Board may remove Escalon from Attachment G if monitoring results show its discharge have no reasonable potential to cause or contribute to a negative impact on the dissolved oxygen / organic enrichment impairment in the San Joaquin River."</i> {emphasis added}</p>	<p>The State Water Board does not agree. Clean water act regulations require that NPDES permits must be "consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant" (See 40 CFR 122.44(d)(1)(B)(vii)). Since Escalon's MS4 is assigned a wasteload allocation in the San Joaquin River DO TMDL, the permit must include that wasteload allocation. Removing Escalon from the TMDL would require an amendment to the Basin Plan. However, the permit is proposing revisions to include methods to demonstrate attainment of waste load allocations, including but not limited to, receiving water monitoring and cessation of discharges. (See proposed revisions to Order, Sections E.15.a.2/F.5.i.1.b)</p>
County of San Joaquin	CSJ1-1	<p>By going beyond what is required by federal law, the permit modifications could trigger claims for unfunded state mandates, and definitely trigger additional analysis under Water Code section 13263, including the factors set forth in Water Code section 13241. See <i>City of Burbank v. SWRCB</i>, 35 Cal.4th 613 (2005).</p> <p><u>Recommendation</u></p> <p>Replace the term "WLA" with "Best Management Practices (BMPs)" when referring to requirements that must be met by the MS4s.</p>	<p>The comment regarding the use of the term "BMP-based WQBELs" in lieu of "waste load allocations" is addressed in Comment CASQA1-8. See also response to comment CASQA1-1.</p> <p>The proposed order incorporates a full discussion titled "Unfunded Mandates Considerations Specific to TMDL Requirements in the Order" on pages 56-59 of the Fact Sheet. The State Water Board refers commenters to that discussion.</p> <p>With regard to the citation to Water Code sections 13263 and 13241 and to <i>City of Burbank v. State Water Board</i>, 35 Cal.4th 613 (2005), in the final sentence of this comment, commenters appear to be arguing that the proposed revisions trigger an analysis of the factors listed in section 13241, including economic considerations. In <i>City of Burbank</i>, the California Supreme Court held that, whether a regional board "complied with sections 13263 and 13241 of California's Porter-Cologne Act by taking into account 'economic considerations,' such as the costs the permit holder will incur to comply with the numeric pollutant restrictions set out in the permits, depends on whether those restrictions meet or</p>

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	CSJ1-1 (Con't)		exceed the requirements of the federal Clean Water Act.” (<i>Id.</i> at pp. 626-627.) Thus, the question to be answered under <i>City of Burbank</i> is whether the permit imposes requirements that are more stringent than federal law such that the Regional Board could only have relied on state authority to impose them. This is not the case here. We note that, among other authority, the federal regulations governing Small MS4 permitting specifically state that “[a]s appropriate, the permit will include . . . [m]ore stringent terms and conditions, including permit requirements that modify, or are in addition to, the minimum control measure based on an approved total maximum daily load. . .” (40 C.F.R. §122.34(c)(1).)
	CSJ1-2	<p>Include Reciprocating Language within the Effluent Limitations and Receiving Water Limitations that Cross References the TMDL.</p> <p>C. EFFLUENT LIMITATIONS</p> <p>1. Permittees shall implement controls as required by this Order to reduce the discharge of pollutants from their MS4s to waters of the U. S. to the MEP.</p> <p>2. <u>In lieu of Water Quality Based Effluent Limits (WQBELs), this Order establishes BMPs consistent with the assumptions and requirements of the applicable TMDL.</u> Permittees shall additionally reduce the discharge of pollutants (1) to achieve TMDL waste load allocations (WLAs) established for discharges by the MS4s. Each Permittee shall comply with applicable BMPs as set forth in Attachment G, pursuant to the associated compliance schedules.</p> <p>and (2) to comply with Special Protections for discharges to ASBS.</p> <p>[move this language to the Discharge Prohibitions or Receiving Water Limitations]</p> <p>2. Storm water discharges regulated by this Order shall not contain a hazardous substance in amounts equal to or in excess of a reportable quantity listed in 40 C.F.R. Part 117 or 40 C.F.R. Part 302. [move this language to the Discharge Prohibitions]</p> <p>Modify Provision D as follows:</p> <p>D. RECEIVING WATER LIMITATIONS</p> <p>... The Permittee shall comply with Receiving Water Limitations through timely implementation of control measures/BMPs and other actions to</p>	See response to comment CASQA 1-4

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	CSJ1-2 (Con't)	reduce pollutants in the discharges and other requirements of this Order including any modifications. The storm water program shall be designed to achieve compliance with Receiving Water Limitations. If exceedance(s) of water quality objectives or water quality standards persist notwithstanding implementation of other storm water program requirements of this Order <u>including the BMPs designed to comply with the TMDLs as set forth in Attachment G</u> , the Permittee shall assure compliance with Receiving Water Limitations by complying with the following procedure	
	CSJ1-3	The Small MS4 General Permit Should Allow the Permittees to Utilize Compliance Schedules for TMDLs. State Water Board staff should work with the Regional Water Board staff and affected stakeholders to determine the regulatory flexibility for extending final compliance dates consistent with any particular TMDL <u>prior to</u> the adoption of Attachment G.	See response to comments CASQA1-5. See also response to comments CASQA1-1 and CASQA1-8.
	CSJ1-4	Modify the language for Provisions E.15.b./ F.5.i.2 as follows: In some cases, Attachment G includes dates that fall outside the term of this Order. Compliance dates that have already passed are enforceable on the effective date of this Order. Permittees may request a time schedule order (TSO) or <u>propose a compliance schedule</u> where a final TMDL compliance deadline is past. Compliance dates that exceed the term of this Order are included for reference, and become enforceable in the event that this Order is administratively extended. <u>Within six months of notification from the Permittee that a TSO or compliance schedule is needed, a Permittee shall submit a formal request. Between a Permittee's request and timely approval of the request, the Permittee will be deemed in compliance with Provisions C and D for the provisions that would be covered by that TSO or compliance schedule. A Permittee that is timely implementing a duly approved TSO or compliance schedule shall be deemed in compliance with Provisions C and D. for the provisions covered by that TSO or compliance schedule.</u> <u>A Permittee requiring additional time to meet applicable requirements set forth in Attachment G that implement a "new, revised, or newly interpreted" water quality objective, as that term is defined in the</u>	The State Water Board agrees that the Order requirements should include greater clarity as to the process and options available to a permittee for compliance where the TMDL final attainment date is past. The State Water Board is thus proposing Section E.15.b. for traditional permittees and Section F.5.i.2. for non-traditional permittees. See response to comments CASQA1-1 and CASQA1-8.

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	CSJ1-4 (Con't)	<p><u>Compliance Schedule Policy, may propose a compliance schedule. The Permittee's proposed compliance schedule shall include a justification satisfying the following criteria:</u></p> <p><u>a. Diligent efforts have been made to quantify pollutant levels in the discharge and the sources of the pollutant in the waste stream, and the results of those efforts;</u></p> <p><u>b. Source control efforts are currently underway or completed, including compliance with any pollution prevention programs that have been established;</u></p> <p><u>c. A proposed schedule for additional source control measures or waste treatment;</u></p> <p><u>d. Data demonstrating current treatment facility performance to compare against existing permit requirements, as necessary to determine which is the more stringent requirement to apply if a schedule of compliance is granted.</u></p> <p><u>e. The highest discharge quality that can reasonably be achieved until final compliance is attained;</u></p> <p><u>f. The proposed compliance schedule is as short as possible, given the type of facilities being constructed or programs being implemented, and industry experience with the time typically required to construct similar facilities or implement similar programs; and</u></p> <p><u>g. Additional information and analyses to be determined by the Regional Water Board on a case-by-case basis.</u></p> <p><u>If the Permittee requires additional time beyond a TMDL's final attainment date to meet the applicable requirements that do not implement a "new, revised, or newly interpreted" water quality objective as defined in the Compliance Schedule Policy, the Permittee may request a TSO pursuant to California Water Code section 13300 for the Central Valley Water Board's consideration. A request for a TSO shall include sufficient information to demonstrate that the Permittee needs time to implement actions, such as designing and constructing facilities or implementing new or significantly expanded programs and securing financing, if necessary, to meet the applicable requirements. Such information may include the following:</u></p>	

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	CSJ1-4 (Con't)	<p><u>a. Data demonstrating the current quality of the MS4 discharge(s) in terms of concentration and/or load of the target pollutant(s) to the receiving waters subject to the TMDL;</u></p> <p><u>b. A detailed description and chronology of structural controls and source control efforts, since the effective date of the TMDL, to reduce the pollutant load in the MS4 discharges to the receiving waters subject to the TMDL;</u></p> <p><u>c. Justification of the need for additional time to achieve the requirements;</u></p> <p><u>d. A detailed time schedule of specific actions the Permittee will take in order to achieve the requirements;</u></p> <p><u>e. A demonstration that the time schedule requested is as short as possible, taking into account the technological, operation, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation(s); and</u></p> <p><u>f. If the requested time schedule exceeds one year, the proposed schedule shall include interim requirements and the date(s) for their achievement.</u></p>	
	CSJ1-5	<p>The County should not be listed as a Responsible Party to the TMDL for Lower San Joaquin River - Diazinon and Chlorpyrifos. The portion of the river to which the TMDL applies is from Mendota Dam to Vernalis. Vernalis lies at the very southern border of the County jurisdiction, where no Phase II portions of the County directly discharge.</p>	<p>The State Water Board agrees. The County of San Joaquin will be removed from this TMDL in Attachment G.</p>
	CSJ1-6	<p>Consistent with Comment #1, each of the TMDLs within Attachment G should include language regarding the use of BMPs when referring to requirements that must be met by the MS4s.</p> <p>Recommendation: Include the following language within each one of the TMDLs that is implementing established WLAs: <u>Best Management Practices (BMPs) This TMDL includes BMPs for MS4s consistent with the assumptions and requirements of the applicable TMDL waste load a/locations (WLAs) established for discharges by the MS4s and with 40 C.F.R. §122.44(k)(2)-(4). The responsible Phase II Entities shall implement BMPs that will attain these</u></p>	<p>See response to comment CASQA1-6</p>

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	CSJ1-6 (Con't)	<u>requirements by the Final Compliance Deadline or approved compliance schedule and maintain such attainment thereafter.</u>	
	CSJ1-7	Each of the TMDLs within Attachment G should directly incorporate the BMP-based WLAs established for discharges by the MS4s. In addition, the TMDL language and requirements should be consistent with the adopted Basin Plan Amendment. Recommendation: Include the WLAs (and any associated footnotes, clarifications, etc.) established for discharges by the MS4s directly within Attachment G as BMP-based requirements.	See response to comments CASQA1-1 and CASQA1-8.
	CSJ1-8	The Proposed Amendment must include language that identifies the TMDL compliance pathways. Recommendation: Include the following language within each one of the TMDLs or as a permit provision that is applicable to all of the TMDLs in Attachment G: Demonstration of Compliance with TMDL WLAs Compliance with the requirements in Provision C. 2 of this Order associated with the applicable WLAs, on or after the final attainment deadline, may be demonstrated by any one of the following methods: 1. Implementation of the BMPs consistent with an approved watershed plan or similar implementation plan/schedule: OR 2. Receiving water monitoring and/or other information, as authorized by the Regional Water Board Executive Officer, that reasonably demonstrates attainment of applicable WLAs in the receiving water (discharges from a Permittee's MS4 did not cause or contribute to an exceedance in the receiving water): OR 3. Attainment of the applicable WLAs within the discharge: OR 4. Representative outfall sample results for validated human DNA markers demonstrate absence (below analytical detection limits or other established thresholds) of anthropogenic waste in MS4 discharges: OR 5. Demonstrate that exceedances of the receiving water limitations in the receiving water are due to loads from natural sources and pollutant loads from the MS4s are not causing or contributing to the exceedances: OR 6. No discharges from the Permittee's MS4 to the applicable water body occurred during the relevant time period: OR 7. The pollutant load reductions for the MS4 discharges are greater than	The State Water Board agrees with this comment in part, as detailed in response to comments CASQA1-1 and CASQA1-8.

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	CSJ1-8 (Con't)	<p>or equal to the WLAs: OR</p> <p>8. Timely implementation of a Regional Water Board-approved management plan or compliance schedule for meeting the applicable WLAs.</p> <p>In addition, the State Water Board and Regional Boards shall further consider other factors as described by the specific TMDLs[6]</p> <p>[6] To support this portion of the recommended language - as an example, the TMDL for Sacramento and San Joaquin Delta - Diazinon and Chlorpyrifos states "In determining compliance with the waste load allocations, the Regional Water Board will consider any data or information submitted by the discharger regarding diazinon and chlorpyrifos inputs from sources outside of the jurisdiction of the permitted discharger, including any diazinon and chlorpyrifos present in precipitation and other available relevant information, and any applicable provisions in the discharger's NPDES permit requiring the discharger to reduce the discharge of pollutants to the maximum extent possible.", Resolution No. R5-2006-0061, Attachment 1, #11, Page 4.</p>	
	CSJ1-9	<p>Attachment G should recognize that participation in Regional Monitoring Programs is supported by the Phase II Permit and incorporate commensurate language.</p> <p>Recommendation: Modify Provision E.13.b. as follows:</p> <p>Permittees shall implement any monitoring requirements assigned to them in Attachment G. <u>With Regional Water Board Executive Officer approval, the Permittees may participate in a regional monitoring program or other collective monitoring effort in lieu of some or all of the individual monitoring requirements specified within Attachment G. The Regional Water Board Executive Officer may require additional monitoring, per Water Code 13383.</u></p> <p>Include the following language within the TMDLs to provide the flexibility necessary if participating in regional monitoring:</p> <p><u>Region 5</u></p> <ul style="list-style-type: none"> • TMDL for Lower San Joaquin River - Diazinon and Chlorpyrifos & TMDL for Sacramento and San Joaquin Delta - Diazinon and Chlorpyrifos & TMDL for Sacramento and Feather Rivers - Diazinon and Chlorpyrifos 	See response to comment CASQA1-10

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	CSJ1-9 (Con't)	<ul style="list-style-type: none"> o 1a Conduct an assessment <u>OR</u> o 1 b ... With Central Valley • TMDL for Lower San Joaquin River, San Joaquin River, Stockton DWSC - Organic Enrichment and Low Dissolved Oxygen o 1By [Hard date: one year from the effective date]. ... <u>OR</u> o 2 With Central Valley • TMDL for the Delta - Methylmercury o 1 a The Permittees shall begin monitoring <u>OR</u> o 1b With Central Valley • TMDL for Clear Lake - Nutrients o 1By [Hard date: 6 months from the effective date] <u>OR</u> o 2 ... With Central Valley 	
	CSJ1-10	<p>The language in Attachment G should be functionally updated to reflect the current status of the Phase II program.</p> <p>Example: TMDL for Lower San Joaquin River, San Joaquin River, Stockton DWSC – Organic Enrichment and Low Dissolved Oxygen</p> <p>-- The Permittees shall document, in their Annual Reports, the implementation of BMPs to control the discharge of oxygen demanding substances and precursors in their urban discharge. Each Annual Report shall include documentation of compliance with the Permit requirements and a discussion of the effectiveness of the BMPs. In subsequent years three through five, Permittees shall complete and submit a Program Effectiveness Assessment, as specified in Section E.14 in this Order.</p> <p>The Permittees shall use the information gained from the Program Effectiveness Assessments to improve their program and identify new BMPs or modifications of existing BMPs to ensure that they are meeting applicable WLAs.</p> <p>-- 1. By [Hard Date: one year from the effective date], Renewal Permittees, as identified within the Designation Criteria column in Attachment A of this Order, may incorporate their individual monitoring and reporting plan, or the Permittees can collectively incorporate a single monitoring plan, within their Storm Water Management Plans approved under the previous 2003 Permit4; all other Permittees shall submit the Monitoring and Reporting Plan <u>consistent with E.13</u> for Central Valley</p>	This comment will be addressed with the recommended edits. See also response to comment CASQA1-10.

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	CSJ1-10 (Con't)	Regional Water Board Executive Officer approval, <u>OR</u> . [also see Comment #8]	
Department of the Air Force	AF1-1	The other comment [re: Lake Elsinore/Canyon Lake TMDL] we submitted in 2015 was not addressed, so we wish to resubmit to you the request to remove item b.3 from the requirements on March ARB.	The efforts carried out by March ARB under the program required by b.3. may involve work and information that is redundant to the work of the Task Force. However, the Task Force's work product may not contain information that is relevant to March ARB, such as estimates of March ARB's relevant contribution to any impairment. Consequently, the Task Force's work cannot be relied upon to guide decisions that March ARB may need to make regarding its system of pollution controls or decisions that the Board may need to make regarding the TMDL that pertain to March ARB. Furthermore, the State and Regional Water Boards strongly supports collaboration among stakeholders in the Lake Elsinore/Canyon Lake watershed. Provision b.3. is designed to incentivize this collaboration and encourage all stakeholders to contribute their fair share of effort towards addressing impairments.
Department of Parks and Recreation	DPR1-1	Leo Carrillo State Beach is not initially listed in the Phase II Small MS4 General Permit, Attachment B, though it would be included by the areas described in Attachment D. Consequently, State Parks filed an NOI to enroll the park unit since it is adjacent and discharges to an ASBS-see WDID# 4 19M2000266. Because Leo Carrillo State Beach was not initially listed in the permit, State Parks is concerned that appropriate TMDLs that may be associated with that park unit were not addressed in the proposed Attachment G amendment. These TMDLs could potentially include Santa Monica Bay Beaches Marine Debris and Bacteria TMDLs.	The State Water Board conducted an analysis and concluded that Leo Carrillo State Beach will be added to the Santa Monica Bay Bacteria TMDL.
Heal the Ocean	HTO1-1	Heal the Ocean wholly supports this Proposed Amendment, and we encourage the State Water Board to approve it with all suggested changes/edits in place. We believe this strong language is critical to achieving water quality goals as outlined in the original Clean Water Act.	Comment Noted. Thank You.
County of Los Angeles	CLA1-1	Attachment B of the proposed Small MS4 Permit identifies the California State Polytechnic University, Pomona (Cal Poly Pomona) and the Lanterman Development Center (LDC) as Small MS4 Permittees. However, in Attachment G of the proposed Small MS4 Permit, the San Gabriel River and Impaired Tributaries Metals and Selenium TMDL is	This suggested edit was confirmed using GIS. Cal Poly Pomona will be removed from the Middle Santa Ana River Indicator Bacteria TMDL and placed under the San Gabriel River Indicator Bacteria TMDL. The San Gabriel River and Impaired Tributaries Metals and Selenium TMDL will

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	CLA1-1 (Con't)	crossed out with the assumption that there are no Small MS4 Permittees in that watershed. This is incorrect because both Cal Poly Pomona and LDC are located in the San Gabriel River Watershed. Further, Attachment G incorrectly lists Cal Poly Pomona as a responsible entity for the Middle Santa Ana River Indicator Bacterial TMDL under the Santa Ana Regional Water Board. Cal Poly Pomona should be removed from the Middle Santa Ana River Indicator Bacterial TMDL and appropriately placed under the San Gabriel River Indicator Bacteria TMDL.	also be included in Attachment G.
County of San Diego	CSD1-1	Replace the term "WLA" with "Water Quality Based Effluent Limit (WQBEL)" when referring to a numeric or BMP-based effluent limitation that must be met by the MS4s.	See response to comments CASQA1-1 and CASQA1-8.
	CSD1-2	<p>On page 124 [of the Fact Sheet], the second paragraph under the Bacteria TMDL heading includes a reference to shellfish harvesting. The Bacteria TMDL is specific to the recreation beneficial use and the reference to shellfish harvesting should be removed. Additionally, the County is participating in studies to improve the Bacteria TMDL to better address the risk to human health. The studies have provided information that demonstrates human sources of bacteria are more directly linked to human health risks and that indicator bacteria in the absence of human sources may not be as correlated with risk in the San Diego Region. As a result, the County is providing requested modifications to the paragraph to better reflect the Bacteria TMDL and the findings of the studies.</p> <p>Modify page 124, second paragraph under Bacteria TMDL heading as follows: The greatest causes of waterbody impairments in the San Diego Region in 2002 were elevated bacteria levels and subsequent beach closures. The presence of pathogens and the probability of disease are directly correlated with <u>the presence of human waste sources and currently measured by</u> the density of indicator bacteria (fecal coliform, total coliform, and enterococcus) in waters used for shellfish harvesting or recreation. When the Bacteria I TMDL wasteload allocations (WLAs) for indicator bacteria are achieved, health risks associated with pathogens are expected to be minimal.</p>	The State Water Board agrees and the Fact Sheet will be edited to reflect this comment.

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	CSD1-3	On page 125, the Fact Sheet includes a list of Phase II entities that are considered responsible parties to the TMDL. However, this list is inconsistent with the listing of Small MS4s provided in Appendix Q of the Bacteria TMDL that are considered responsible parties to the TMDL. The list of responsible parties should be modified for consistency with Appendix Q of the TMDL.	Page 125 of the Fact Sheet lists those responsible dischargers from the Phase II entities listed in Appendix Q of the Bacteria TMDL that are currently enrolled in the Phase II General Permit and are within watersheds that discharge to the impaired water quality segments identified in the Bacteria I TMDL. North County Transit District is not listed in Appendix Q because the State Water Board adopted the Statewide General Phase II Storm Water Permit on February 5, 2013, after the TMDL had been adopted. But NCTD is listed in the Non-Traditional Small MS4 table in section XVII "Regional Board Designations" of the Fact Sheet. The Bacteria TMDL clearly states: "Owners and operators of Phase II MS4s in the watersheds subject to these TMDLs, identified by the San Diego Water Board as significant sources of bacteria discharging to the receiving waters and/or Phase I MS4s, will be required to submit a Notice of Intent to comply with the NPDES requirements in the State Water Board general WDRs as soon as possible after the effective date of these TMDLs." Therefore, NCTD was included as a responsible party to the TMDL.
	CSD1-4	<p>On page 125 and 126 [of the Fact Sheet], Table 1 is provided as an excerpt of the WLAs from the Bacteria TMDL. The excerpt is missing a key footnote from the TMDL that describes the allocations and the way in which the allocations should be split between Phase I and Phase II MS4s. This footnote should be included in the Fact Sheet.</p> <p>Add the following footnote from the Bacteria TMDL to Table 1 on page 125 and 126 of the Fact Sheet: "Because there are no Phase II MS4s enrolled under the State General Permit for Small MS4s, discharges from Phase II MS4s are not permitted (i.e., WLA = 0) and Municipal Dischargers are only the Phase I MS4s in this Implementation Milestone item. When a Phase II MS4 is enrolled under the State General Permit for Small MS4s or issued an individual NPDES permit, the Municipal Dischargers will be both the Phase I MS4s and Phase II MS4s in this Implementation Milestone item."</p>	<p>The State Water Board agrees with the commenter that a footnote is needed. However, the exact language of footnote "d" to Table 11-9 of the Final Technical Report to the Bacteria TMDL is no longer accurate. The Bacteria TMDL was adopted three years before the Phase II General Permit was updated in 2013. Attachment B to Order No. 2013-0001-DWQ includes a list of Non-Traditional Small MS4s and Attachment G included Region specific Regional Board approved TMDLs where urban runoff is listed as a source. Therefore, the following footnote is proposed as footnote 3 to the Deliverables/Actions Required Table in the Fact Sheet.</p> <p><u>Implementation Action</u> 50% Reductions^{1,3} – Priority2 1 50% Reductions^{1,3} – Priority2 2 50% Reductions^{1,3} – Priority2 3 100% Reductions^{1,3} – Priority2 1,2,3</p> <p><u>Notes:</u></p>

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	CSD1-4 (Con't)		[Footnotes 1 & 2]... 3 "Phase II MS4 enrolled under the State General Permit for Small MS4s or issued an individual NPDES permit, are considered a Municipal Discharger along with Phase I MS4s in this Implementation Milestone item."
	CSD1-5	The listing of deliverables/actions required on page 126 [of the Fact Sheet] includes requirements for Phase I MS4s and Caltrans. Requirements for Phase I MS4s and Caltrans should not be included in the Small MS4 General Permit. The County requests that references to the Phase I MS4s and Caltrans be removed from the table.	The State Water Board agrees and the Fact Sheet will be edited to reflect this comment.
	CSD1-6	<p>The Fact Sheet includes two conflicting discussions of how compliance with the Bacteria TMDL will be determined. The first paragraph on page 127 states that compliance is based on monitoring data and attempts to restate in a summary form the notes to the implementation actions table above the paragraph. The paragraph discussion is confusing and incomplete as compared to the notes and inconsistent with the discussion on page 124 of the Fact Sheet, which states that Phase II MS4s will be in compliance if they implement a Storm Water Pollution Prevention Plan (SWPPP). Therefore, the County recommends the paragraph be deleted.</p> <p>Delete the following paragraph on page 127 that discusses determination of compliance with the Bacteria TMDL. Compliance with the TMDL is based on the frequency of which concentrations of bacteria (total coliform, enterococcus, and fecal coliform) in the discharge are below the wet and dry allowable exceedance day and exceedance percentages according to the TMDL schedule.</p>	Water Board agrees with the comment and will modify page 127 of the Fact Sheet to delete the following paragraph. " Compliance with the TMDL is based on the frequency of which concentrations of bacteria (total coliform, enterococcus, and fecal coliform) in the discharge are below the wet and dry allowable exceedance day and exceedance percentages according to the TMDL schedule. "
	CSD1-7	The discussion on page 124 [of the Fact Sheet] outlines requirements for Phase II dischargers "identified as a significant source of bacteria as discussed below." However, significant sources of bacteria are not discussed further in the section. Per the TMDL, Phase II MS4s that are determined to be a significant source of bacteria are required to participate in receiving water monitoring programs. "Phase II MS4s, agricultural dischargers, and other sources that are identified as significant sources (i.e., causing or contributing to exceedances in the	The State Water Board acknowledges the comment and believes the language in the Fact Sheet and Attachment G are consistent with the TMDL. The comment requests the Fact Sheet and Attachment G to include language consistent with the TMDL. The quoted passage from the TMDL requires a Phase II discharger to monitor receiving waters if discharges from their MS4 facilities are determined to be significant sources of bacteria. The Phase II MS4s are not required to participate in receiving water "programs" as stated by the Commenter. Therefore,

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	CSD1-7 (Con't)	receiving waters) will also be responsible for monitoring the receiving waters." This requirement should be included in the Fact Sheet and Attachment G.	Attachment G requires a Phase II MS4 to submit the monitoring and assessment of its discharges as part of the Annual Reports. The San Diego Water Board will review the Annual Reports and make a determination if the Phase II MS4 discharges are significant, thus requiring receiving monitoring. Current language in Attachment G "encourages Phase II MS4 permittees to collaborate and coordinate with Phase I MS4s and other responsible parties to meet the Bacteria TMDL." The State Water Board will add the following language to #3 to clarify collaboration and cooperation can include monitoring efforts as well: {...}3. The Permittees are encouraged to collaborate and coordinate with Phase I MS4s and other responsible parties to the Bacteria I TMDL using an adaptive framework approach as part of the waste load reduction planning and implementation strategies in the required SWPPP pursuant to section F of this Order <u>and monitoring required pursuant to section F.5.i.4.</u> Coordinated efforts by all responsible parties will accomplish ...
	CSD1-8	<p>The Fact Sheet should include a discussion of all methods of compliance that are allowed for Phase II Small MS4s under the TMDL, not just implementing the SWPPP. This includes meeting the numeric targets in the receiving water, demonstrating allocations are being met at the point of discharge, and showing that exceedances are caused by natural sources.</p> <p>Include the following paragraph from the Bacteria TMDL describing options for determining compliance in addition to the implementation of the SWPPP. "If the receiving water limitations (based on the numeric targets) are met in the receiving waters, the assumption will be that the Phase II MS4s have met their WLAs. If, however, the receiving water limitations are not being met in the receiving waters and one or more Phase II MS4 dischargers are identified as sources of bacteria causing exceedances, the specific Phase II MS4s will be responsible for reducing their bacteria loads and/or demonstrating that controllable anthropogenic discharges from those specific Phase II MS4s are not causing the exceedances."</p>	The State Water Board agrees and the Order has been edited to reflect the main point of the comment (that there should be methods of compliance described), rather than the specific language requested. See proposed Order sections E.15.a.2 and F.5.i.1.b. (Also response to comments CASQA1-1 and CASQA1-8)

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	CSD1-9	<p>Clarify the Incorporation of WLAs and determining compliance for the Bacteria TMDL: For the Bacteria TMDL, the language in Attachment G should be modified to be consistent with the edits requested in the Fact Sheet in Comment #3 and Comment #1. Specifically, the County requests that the references to "WLA" be removed and replaced by "WQBEL" that is clearly set equal to the implementation of a SWPPP, consistent with the language in the TMDL. Additionally, compliance pathways beyond just implementation of SWPPP should be included for consistency with the TMDL. The list of responsible Phase II Permittees should be updated to be consistent with Appendix Q of the Bacteria TMDL. Finally, for Phase II dischargers identified as a significant source of bacteria, include a requirement to participate in the receiving water monitoring.</p> <p>Recommendation: Modify the Attachment G requirements for the Bacteria TMDL as follows: Remove Marine Corps Base Camp Pendleton. Also modify the following:</p> <p>The Phase II entities identified in this TMDL section (hereinafter referred to as Permittees in this TMDL section) must take the following actions to meet the requirements of this TMDL:</p> <p><u>[...]3. Permittees identified as significant sources of bacteria, participate in receiving water monitoring program for waterbodies to which discharges occur.[...]</u></p> <p>The wasteload allocations (WLAs) identified in the Fact Sheet of this Order are incorporated by reference.</p> <p><u>The WQBELs consistent with the assumptions and requirements of the Bacteria TMDL waste load allocations (WLAs) are set equal to the development and implementation of a SWPPP that prevents human sources of bacteria from being discharged to the receiving water.</u></p> <p><u>Compliance with the WQBELs and effluent limitations in Provision C.2 of this Order associated with the applicable WLAs, on or after the final attainment deadline, may be demonstrated by any one of the following methods:</u></p> <p><u>1. Implementation of the BMPs consistent with an approved SWPPP; OR</u></p> <p><u>2. Receiving water monitoring and/or other information, as authorized by the Regional Water Board Executive Officer, that reasonably</u></p>	<p>In regard to the first part of this comment, see response to comments CASQA1-1 and CASQA1-8.</p> <p>The San Diego Regional Water Board made a determination that Camp Pendleton is included in the Bacteria I TMDL because portions of the Base discharge to the San Luis Rey Hydraulic Unit and the entire hydrologic unit is included in the TMDL. The Commenter recommends adding a requirement for Phase II MS4s to participate in monitoring programs for waterbodies to which discharges occur. Requiring Phase II MS4s to participate in existing monitoring programs is inconsistent with the Bacteria TMDL. Phase II MS4s are required to submit SWPPPs and Annual Reports. The San Diego Water Board will review the Annual Reports and make a determination if the Phase II MS4 discharges are significant, thus requiring receiving monitoring. Current language in Attachment G "encourages Phase II MS4 permittees to collaborate and coordinate with Phase I MS4s and other responsible parties to meet the Bacteria TMDL."</p> <p>The State Water Board will add the following language to #3 to clarify collaboration and cooperation can include monitoring efforts as well: {...} 3. The Permittees are encouraged to collaborate and coordinate with Phase I MS4s and other responsible parties to the Bacteria I TMDL using an adaptive framework approach as part of the waste load reduction planning and implementation strategies in the required SWPPP pursuant to section F of this <u>Order and monitoring required pursuant to section F.5.i.4. Coordinated efforts by all responsible parties will accomplish ...</u></p>

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	CSD1-9 (Con't)	<p><u>demonstrates attainment of numeric targets in the receiving water (Permittee's MS4 did not cause or contribute to an exceedance in the receiving water); OR</u></p> <p><u>3. No discharges from the Permittee's MS4 to the applicable water body during the relevant time period; OR</u></p> <p><u>4. Demonstration that controllable anthropogenic loads from the MS4 are not contributing to receiving water exceedances</u></p> <p><u>The TMDL specifies that the final Dry Weather WLAs are to be achieved by April 4, 2021.</u></p> <p><u>The TMDL also specifies that the final Wet Weather WLAs are to be achieved by April 4, 2031 (April 4, 2021 if SWPPP does not contain load reduction programs for other pollutants).</u></p>	
City of Watsonville	CW1-1	<p>Small DACs such as Watsonville simply do not have the revenue to comply with such extensive unfunded regulatory programs, and it puts undue financial burden on communities already struggling to meet basic public health and safety needs. It is critical that economic feasibility be considered as part of permit regulations.</p>	<p>See response to comment CSJ1-1 with regard to the Water Boards' legal requirements regarding economic considerations. The State Water Board is nevertheless committed to considering economics when developing TMDL requirements and the State Water Board is sensitive to the financial burdens on small communities. The requirements for the four TMDLs to which the City is subject are designed to provide as much flexibility as possible to the City to propose its own program for attainment of the wasteload allocations. It is expected that the City may propose BMPs that control more than one pollutant and prioritize implementation so that it can address the impairments in the most cost-effective manner possible. The requirements further anticipate that the City will collaborate with other agencies and permittees to attain the wasteload allocations, providing additional cost reductions. The requirements allow the City to set interim targets and adaptively manage achievement of these targets. If the City is unable to demonstrate final attainment of the wasteload allocation, the City may request a time schedule order or request that the Regional Water Board initiate a process to revise the TMDL, as discussed in response CASQA1-5. Finally, the City may currently seek funding for projects through Proposition 1 grants, as the second round of grants is tentatively scheduled for the summer of 2018. There is approximately \$86 million available for this round of solicitations.</p>

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	CW1-2	The pathogen TMDLs do not specify attainment of pathogen reductions for natural (birds and wildlife) and other uncontrollable sources, which account for the vast majority of contributions of fecal indicator bacteria (FIB). These uncontrollable sources in urban runoff and receiving waters may make attainment of waste load allocations and water quality objectives nearly impossible, particularly in urban areas. The City requests that a variance be considered for TMDL impacted water bodies that have a WAAP for pathogens.	The State Water Board is not inclined to offer a variance since the TMDL and Attachment G provide clarity regarding controllable versus natural sources.
	CW1-3	Watsonville Slough Pathogens TMDL. P 70. Hanson Slough is not within the jurisdiction of the City of Watsonville's MS4 boundary. The City requests that the waste load allocation be assigned to County of Santa Cruz. As partner agencies we can work collaboratively but it will be challenging for the City to enforce since it is outside of the boundary.	The channel of Hanson Slough is not within the jurisdiction of the City of Watsonville's MS4. However, a portion of the contributing drainage area is within the City's MS4 boundary, thus there is a potential for load contributions from the City MS4. Nevertheless, the City's comment acknowledges the practicality of collaborating with the County to address potential loading.
	CW1-4	Attachment G, p18, item 7. The modeling requirement for fecal coliform TMDLs is a new requirement. The practice of the State requiring municipalities to invest in modeling to prove compliance with TMDLs is cost prohibitive and takes away from other critical infrastructure resources. The City would like to request a State standardized modeling program that is free for use for municipalities.	The added language does not require modeling but indicates modeling, "... and/or other available tools ..." are acceptable, including commonly available spreadsheets. The requirement in WAAP element no. 7 is for quantifiable numeric analysis, which is essential to demonstrate that BMPs can achieve wasteload allocations. Also, the State Water Board is in the process of developing a modeling and/or quantitative assessment tool or guidance for these types of demonstrations.
City of Santa Maria	CSM1-1	Amended Fact Sheet, Pages 67-68: This portion of the amended Fact Sheet discusses the Central Coast Water Board's use of Wasteload Allocation Attainment Programs ("WAAPs") as a comprehensive way to guide municipalities toward attainment of WQBELs derived from WLAs. In addition to the discussion of WAAPs, the City requests that language be added to this section to acknowledge the role that integrated plans may similarly play in achieving WQBELs. The City suggests the following paragraph for consideration: <u>Another comprehensive way that municipalities may seek to attain WQBELs is through the use of an integrated plan. In May of 2012, EPA issued its "Integrated Municipal Stormwater and Wastewater Planning Approach Framework" (Framework). The Framework outlines guiding principles of the integrated planning approach and sets forth anticipated elements of an integrated plan. The Framework allows for the use of flexibilities in the</u>	The State Water Board is not adding this language because an integrated plan is already referenced as an acceptable alternative to a WAAP in Attachment G for the Santa Maria TMDLs. Additionally, Pages 67-68 do not mention "WAAPs as a comprehensive way to guide municipalities toward attainment of WQBELs derived from WLAs." The text reads: "the Wasteload Allocation Attainment Program approach as a means to systematically guide municipalities towards attainment of their wasteload allocations."

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	CSM1-1 (Con't)	<u>Clean Water Act to allow municipalities to plan for and timely achieve their water quality requirements. A properly developed integrated plan is a viable method for the attainment of water quality requirements. The State Board encourages Regional Boards to support the use of developed integrated plans by municipalities.</u>	
	CSM1-2	Amended Fact Sheet, Page 81: This portion of the amended Fact Sheet sets forth the deliverables/actions required to comply with the Santa Maria River Watershed Fecal Indicator Bacteria TMDL. In addition to the reference to the WAAP as the basis for compliance, the first sentence on page 81 should include the phrase "or other integrated plan" after the reference to the WAAP. This change is consistent with the language in the second paragraph on page 81 and in Attachment G.	The State Water Board agrees. The sentence will read: "Compliance with this TMDL is dependent on the development and implementation of a Wasteload Allocation Attainment Program, <u>or other integrated plan</u> , per the requirements in Attachment G of this Order."
	CSM1-3	Amended Fact Sheet, Page 83: This portion of the amended Fact Sheet sets forth deliverables/actions required to comply with the Lower Santa Maria River Watershed and Tributaries to Oso Flaco Lake Nitrogen Compounds and Orthophosphate TMDL. In addition to the reference to the WAAP as the basis for compliance, the phrase "or other integrated plan" should be inserted after the reference to the WAAP. This is consistent with the language in Attachment G.	The State Water Board agrees. The sentence will read: "Compliance with this TMDL is dependent on the development and implementation of a Wasteload Allocation Attainment Program, <u>or other integrated plan</u> , per the requirements in Attachment G of this Order."
	CSM1-4	The City supports the way that the Amendment incorporates the use of integrated plans, however, the City remains concerned about the language in Attachment G related to the Santa Maria Toxicity and Pesticides TMDL. The City appreciates that the Amendment now includes specific references to provisions in the TMDL that permit the City to achieve compliance through participation in statewide programs addressing urban pesticide water pollution. As reflected in the July 31, 2015 comment letter submitted by California Stormwater Quality Association (CASQA) on a previous draft of revisions to Attachment G, true progress on addressing pesticide issues will only come through State and Federal efforts to adequately assess and prevent urban water quality impacts from pesticide applications in urban areas. The City fought hard to have this reality recognized in the	The amendment was written to incorporate the City's and CASQA's comments and concerns related to cooperation with statewide agencies related to pesticides.

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	CSM1-4 (Con't)	language of the adopted TMDL. To the extent that the Amendment incorporates the WLA of the TMDL in a manner that exceeds the requirements of the TMDL, the City objects to the Amendment.	
North County Transit District	NCTD1-1	<p>NCTD has compiled the following comments pertaining to the Water Board incorporating Bacteria Project I - Twenty Beaches and Creeks into Attachment G of the General Permit.</p> <ul style="list-style-type: none"> • NCTD's Right-of-Way (ROW) and facilities are only in three of the hydraulic areas with bacterial TMDLs; the San Luis Rey, San Marcos, and Solana Beach hydraulic areas. NCTD does not discharge directly to the Pacific Ocean within the San Luis Rey, San Marcos, and Solana Beach hydrologic areas. • The edge of NCTD's ROW is approximately 1,450 feet from the Pacific Ocean within the San Luis Rey hydrologic basin. • The edge of NCTD's ROW is approximately 1,640 feet from the Pacific Ocean within the San Marcos hydrologic basin. • The edge of NCTD's ROW is approximately 890 feet from the Pacific Ocean within the Solana Beach hydrologic basin. • There are no sources of indicator bacteria at NCTD facilities. 	<p>Finding 19 of Order No. R9-2010-0001 (Bacteria TMDL) describes how the sources of bacteria were determined. In part, this finding states: "Bacteria build up on the land surface as a result of various anthropogenic land uses (e.g., urban development and agriculture) and natural processes (e.g., birds and wildlife). In urban areas, bacteria are washed off the land surface by dry weather and wet weather flows and transported through pipes and conveyance channels of the municipal separate storm sewer systems (MS4s) to surface waters.....In order to quantify bacteria loading from these various sources and transport mechanisms, 13 land-use types were identified in the technical TMDL analysis: Low Density Residential, High Density Residential, Commercial/Institutional, Industrial/Transportation, Military, Parks/Recreation, Open Recreation, Agriculture, Dairy/Intensive Livestock, Horse Ranches, Open Space, Water, and Transitional (Construction Activities). In the technical TMDL analysis for this project, the 13 land use types were grouped into the following four land use categories: 1) owners/operators of municipal separate storm sewers (Municipal MS4s); 2) Caltrans (separated from other Municipal MS4s); 3) Agriculture; and 4) Open Space. Land uses associated with the Municipal MS4s and Caltrans have discharges that are considered point sources." NCTD is an owner/operator of a Small Non-Traditional MS4 which falls under category 1. The commenter brings up several facts that would get reviewed as part of NCTDs Storm Water Pollution Prevention Plan and Annual Reports. The San Diego Regional Water Board disagrees with NCTDs statement that there are no sources of bacteria at NCTD facilities. NCTDs MS4 facilities interconnect at many locations with Phase I MS4 facilities that ultimately drain to the impaired waterways or ocean either via surface flow or engineered storm drain systems. NCTD conducts activities in its areas and facilities such as waste management or food vendors that potentially contribute to the bacteria pollutant loading discharged to Phase I MS4s. Since only a few bacteria sources are present at NCTD facilities, monitoring should show NCTD is not causing or contributing to exceedances of water quality</p>

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	NCTD1-1 (Con't)		standards in the receiving water which would result in NCTD being in compliance with the bacteria TMDL by the compliance dates. Since NCTD facilities are within the watersheds or subwatershed covered by the Bacteria TMDL, NCTD was included in Attachment G. NCTD would only be required to comply with the bacteria water quality based effluent limitations in those watersheds or subwatershed covered by the TMDL. The proximity of NCTDs ROWs to the impaired waterbody segment will factor into the types of best management controls NCTD will need to implement.
	NCTD1-2	<p>NCTD has also compiled the following comments pertaining to the Water Board identifying NCTD as a responsible party to the sediment TMDL for Los Penasquitos Lagoon.</p> <ul style="list-style-type: none"> • NCTD does not discharge into the Los Penasquitos Lagoon from its MS4 Permit jurisdiction. The mouth of the lagoon is located outside the jurisdiction of NCTD's MS4 Permit boundary. NCTD's MS4 Permit jurisdiction extends from the Orange County Line in the north, to Camino Del Mar/Torrey Pines Bridge in the south. 	North County Transit District is not listed in Appendix Q because the State Water Board adopted the Statewide General Phase II Storm Water Permit on February 5, 2013, after the TMDL had been adopted. But NCTD is listed in the Non-Traditional Small MS4 table in section XVII "Regional Board Designations" of the Fact Sheet. The Bacteria TMDL clearly states: "Owners and operators of Phase II MS4s in the watersheds subject to these TMDLs, identified by the San Diego Water Board as significant sources of bacteria discharging to the receiving waters and/or Phase I MS4s, will be required to submit a Notice of Intent to comply with the NPDES requirements in the State Water Board general WDRs as soon as possible after the effective date of these TMDLs." Therefore, NCTD was included as a responsible party to the TMDL. The TMDL applies watershed - wide to all dischargers in the watershed. Of particular concern are sources of sediment from construction sites. NCTD conducts construction projects through either maintenance activities at facilities and in its Right of Way, or improvement projects (e.g. at the time of these response to comments, NCTD is conducting a construction project that discharges to the Los Penasquitos Lagoon via SANDAG) with potential to generate sources of sediment loading to the lagoon.
	NCTD1-3	As discussed above, NCTD does not discharge directly to any of the impaired beaches as provided in Attachment G of the General Permit. In addition, in each of the three hydraulic areas identified above there is an active Phase I Permittee between NCTD's MS4 jurisdiction and the applicable waterbody identified in in Attachment G. Therefore based on the geography of NCTD's right-of-way and the locations of the impaired beaches, NCTD does not believe it should be listed in Attachment G	See Comment Response NCTD1-1 and NCTD1-2

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	NCTD1-3 (Con't)	<p>of the draft amendment.</p> <p>Notwithstanding the above, NCTD has still taken proactive steps to protect surface water from bacteria, including the following.</p> <ul style="list-style-type: none"> • NCTD has a "No Trespassing" policy that prohibits homeless encampments within NCTD-owned ROW property and enforces this policy during daily and weekly rail inspections. • NCTD also conducts vegetation trimming and removal in order to expose any homeless encampment, so they can be easily noticed and removed. <p>The additional identified requirements for implementing the Bacteria Project I - Twenty Beaches and Creeks TMDL is infeasible within NCTD's MS4 as the District has previously implemented the only best management practice that can be enforced for this pollutant.</p>	
California Coastkeeper Alliance	CCA1-1	<p>The state water board should require immediate compliance with effluent limitations set forth in the California Toxics Rule.</p> <p>The Amendment currently contains TMDL implementation schedules for CTR pollution that extend compliance beyond the CTR compliance schedule sunset provision. Furthermore, it will constitute illegal backsliding if the Phase II Permit extends existing compliance deadlines for other pollutants based on a TMDL implementation schedule.</p> <p>Therefore, we request that the State Water Board require immediate compliance with effluent limitations set forth in the California Toxics Rule, and remove any compliance deadlines that extend beyond that allowed under the Rule.</p> <p>Similarly, any permit that extends existing compliance deadlines for other pollutants based on a TMDL implementation schedule would be illegal backsliding.</p>	<p>The Permit's TMDL compliance schedules are both legal and technically appropriate. Commenters are correct that the California Toxics Rule (CTR) (40 C.F.R. § 131.38) no longer authorizes compliance schedules for pollutants that are based on CTR criteria. However, with respect to a MS4 permit that contains effluent limitations pursuant to CWA section 402(p)(3)(B) and/or 303(d), rather than pursuant to CWA section 301(b)(1)(C), EPA compliance schedule authorization is not required. Rather, the State Water Board's authority to set compliance schedules in the Permit stems from the implementation plans of the TMDLs identified in Attachment G. In California, TMDL implementation plans are typically adopted through Basin Plan amendments. The Basin Plan amendment, including the TMDL implementation plan, becomes a regulation upon approval by the State of California Office of Administrative Law (OAL). (Gov. Code, § 11353, subd. (b).) All permits must implement the applicable Basin Plan, including any applicable TMDL implementation plans. (Wat. Code, § 13263, subd. (a); Wat. Code, § 13377.) The compliance schedules in the Permit are consistent with the TMDL implementation plans set forth in the Basin Plan and do not exceed the maximum time the plans allow.</p> <p>The TMDL compliance schedules do not constitute backsliding under the Clean Water Act. Commenters are unclear as to what they identify as the "effluent limitations" that are the subject of backsliding in this amendment.</p>

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	CCA1-1 (Con't)		<p>The amendment does not revise the final wasteload allocations or the final deadlines to achieve those wasteload allocations. Even if the revised BMP-based effluent limitations are less stringent than the previous requirements -- a proposition with which the State Water Board disagrees -- a statutory exception to anti-backsliding exists where the effluent limitation is based on a TMDL and the cumulative effect of any revisions continues to assure the attainment of the water quality standard. (33 U.S.C. 1313(d)(4)(A)). To the extent commenters are instead arguing that the TMDL-derived effluent limitations backslide from the receiving water limitations in the 2003 permit, they have generally not timely raised this issue because most of the TMDL-based requirements were incorporated into the permit during the 2013 adoption. Further, receiving water limitations in MS4 permits are not derived from Clean Water Act section 301(b)(1)(C) or 303(d) or (e) (nor established on the basis of Clean Water Act section 402(a)(1)(B)), but rather adopted under the discretion afforded to the Boards within Clean Water Act section 402(p)(3)(B). They are therefore not subject to the Clean Water Act prohibition on backsliding, which references only those specified sections. (33 U.S.C. 1342(o)(1).) In any case, compliance schedules to achieve water quality standards do not result in "effluent limitations which are less stringent than the comparable effluent limitations in the previous permit." (33 U.S.C. 1342(o)(1)). Finally, because Clean Water Act section 402(o)(1) does not apply to this amendment, neither does 402(o)(3) as clearly established in that provision.</p>
	CCA1-2	<p>The state water board should provide specific monitoring programs – particularly sample frequencies for all TMDLs. Attachment G fails to provide details on monitoring specifics – most importantly failing to provide a sample frequency. The State Water Boards need to <u>ensure that all Regional Boards have provided adequate details as to the required monitoring program – and specifically to ensure all TMDLs monitoring programs have sample frequencies included.</u></p>	<p>The State Water Board thinks that the monitoring provisions are sufficiently defined in context of the various TMDL waterbody/pollutant combinations with the assurance that Regional Water Boards will have to approve any proposed monitoring plans. Regional Water Board staff will be better able to ascertain whether or not any proposed monitoring will address the needs of the TMDL as well as how the program will integrate with any regional efforts underway.</p>

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	CCA1-3	<p>The state water board should reference both Sections E and F of the Order to ensure both traditional and non-traditional MS4s are covered under Attachment G.</p> <p>Therefore, the State Water Board needs to <u>reference both Sections E and F of the Order to ensure both traditional and non-traditional permittees are covered under the Amendment.</u></p>	This comment will be addressed with the recommended edits where appropriate.
CSU Channel Islands	CSUC11-1	<p>The permit goes on at length to claim that the amendment is only a continuation of the existing MS4 permit language. The statement completely ignores the fact that the amendment requires the following in Attachment G [...]</p> <p>This is clearly additional effort, regardless of the alternative chosen. For any CSU campus, the selection of alternate I requires a detailed agreement between the campus and the adjacent or surrounding MS4, whether that be a Phase I or Phase II MS4. For the protection and autonomy of the campus, these details would include delineation of the jurisdictional authority of the outside MS4, sharing of costs, right-of-entry and inspection and an unlimited number of issues.</p> <p>Once agreed upon, each MS4 must assign additional resources for implementation of the agreement, in addition to compliance efforts with MS4 permit requirements.</p>	The proposed order incorporates a full discussion titled “Unfunded Mandates Considerations Specific to TMDL Requirements in the Order” on pages 56-59 of the Fact Sheet. The State Water Board refers commenters to that discussion. The Fact Sheet will not be revised in response to the comment.
	CSUC11-2	<p>The TMDL substances are arbitrary to the campus. The Fact Sheet states that the Campus is a source of non-storm water discharges of substances that are subject to TMDLs, but does not state how this was determined. In fact, the campus has one outfall that discharges to Calleguas Creek. This outfall is normally dry and the hydrology and hydraulic conditions of this outfall make it nearly impossible for it to discharge in any storm event smaller or equal to the 85th percentile event, or, for that matter, any storm event less than a flood-stage storm event. It's also impossible to sample this outfall when discharging because it's submerged and the channel would be at flood stage.</p> <p>Portions of the campus discharge to Long Grade Canyon Creek; however, it is also highly unlikely for this discharge to reach Calleguas Creek in any storm event equal to or less than an 85th percentile storm.</p>	The contributions of pollutants from the MS4s included in Attachment G were determined during Calleguas Creek TMDL development and are detailed in the TMDL Staff Reports. Regarding the conditions under which discharges from the campus may reach Calleguas Creek, the TMDLs identify critical conditions, which may not equate to the 85th percentile event. Additionally, discharges from the campus that reach Calleguas Creek indirectly must still be addressed from a permitting standpoint.

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	CSUCI1-2 (Con't)	The remainder of the campus discharges through culverts that pass under Potrero Road. This discharge is transmitted in a pipe for at least 1,000 feet and then in open channels that drain adjacent privately owned agricultural land. It finally reaches Calleguas Creek two miles downstream of the campus.	
	CSUCI1-3	<p>The campus did not receive constructive notice of the comment period. The campus received a phone call from the State Water Board staff in June 2017, but the subject of the call was to inform the campus that Attachment G of the permit had been amended and CSUCI had been named as a Phase II entity for Calleguas Creek TMDLs; that required actions provided to the University in the amended Attachment G are to enter into a cooperative agreement with another MS4 or propose a program for compliance with the identified WLAs; that the TMDL for toxicity had already passed the attainment date and the campus would be required to be in compliance with this TMDL at the adoption of the amendment; and that questions could be directed to the Los Angeles Regional Water Quality Control Board.</p> <p>The previous Informal Draft of Proposed Revisions of Attachment G circulated June 19, 2015 did not include Calleguas Creek nor did it name CSUCI as a Municipality required to comply with TMDL WLAs. Effectively CSUCI was provided one month to review and comment on the revisions. This is an insufficient amount of time to adequately evaluate and respond to these new requirements.</p>	The State Water Board offered an extended comment period to accommodate this request. The State Water Board staff met with Commenter and other CSU campus administrators (including the Chancellor's Office) on August 2, 2017, to discuss the Amendment and to answer any questions they had.
	CSUCI1-4	<p>The MS4 General Permit Issued in 2013 indicated in the Findings #40 "The Regional Water Boards are additionally being directed through this Order to review the TMDL-specific permit requirements of Attachment G in consultation with the Permittees and the State Water Board staff and propose any revisions to the State Water Board within one year of the effective date of this order." CSUCI was never contacted nor consulted with any representatives of the State Water Board or Los Angeles Water Board on Attachment G or TMDL requirements for the campus.</p> <p>The lack of communication with CSUCI prior to the 2017/2018 budget schedule, presents additional problems to an already stressed state</p>	<p>As a non-traditional permittee, it was determined by the Regional Water Board that the university was a significant discharger of pollutants in storm water to Waters of the US. The TMDLs lists "Urban runoff" (or in the Toxicity TMDL, "Urban Use") as a source of the impairment. The TMDLs assign WLAs to "Storm Water Permittees" (or similar variant). CSUCI fulfills that criteria and thus subject to the requirements of the TMDL.</p> <p>The State Water Board recognizes that SCUCI was not afforded an opportunity to meet with the State Water Board and the Los Angeles Water Board during the development of the Attachment G requirements. In part in recognition of this omission, State Water Board staff specifically</p>

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	CSUCI1-4 (Con't)	<p>budget.</p> <p>CSUCI requests that the board provide detailed analysis that CSUCI is discharging TMDL constituents to Calleguas Creek or remove CSUCI from the TMDL listing for Calleguas Creek.</p>	<p>contacted commenter by phone in June 2017 to make sure they were aware of the revisions and traveled to Southern California to meet with Commenter and other CSU campus administrators (including the Chancellor's Office) on August 7, 2017, to discuss the Amendment and to answer any questions they had. The State Water Board additionally partially granted a request from the CSU Chancellor's Office to extend the comment period by three months. A one month extension was granted instead. Finally, the State Water Board admitted into the record a late comment letter filed by the CSUs on September 26, 2017.</p>
Napa County Flood Control and Water Conservation District	NCFC1-1	<p>In the Body of text for Deliverables/Action required for the Napa River Pathogens TMDL:</p> <p>The BPA does not include this specific information (highlighted i. through iv.) and the permittees should be given the opportunity to identify the "specific measures to reduce discharge of human and animal waste".</p>	<p>In regard to bulleted requirements i., iii., and iv., these are all extensions of existing permit requirements putting emphasis on the pollutant of concern for this TMDL. These requirements are very much in accordance with the goals and assumptions of the TMDL. In regard to bulleted requirement ii., this requirement does not, in any way, reduce the ability of the Commenter to identify the specific measures to be implemented. The State Water Board will therefore not edit Attachment G in response to this comment.</p>
	NCFC1-2	<p>In the Body of text for Deliverables/Action required for the Napa River Sediment TMDL:</p> <p>BPA specifies these actions pertain only to Napa County.</p> <p>Recommended modifications: "To attain the shared load allocation of 27,000 metric tons/year, <u>Napa County municipalities identified in this TMDL section</u> shall implement <u>measures opportunities to repair retrofit and/or reconstruct of road crossings[...]</u>"</p>	<p>The State Water Board agrees and will make the appropriate changes.</p>
	NCFC1-3	<p>In the Body of text for Deliverables/Action required for the Napa River Sediment TMDL:</p> <p>BPA specifies the Oct. 31, 2014 date and this compliance date was already met.</p> <p>Recommended modifications: "Specifically, to reduce road-related erosion and protect stream-riparian habitat conditions, <u>Napa County the municipalities shall by September 30, 2017October 31, 2014:</u>"</p>	<p>The State Water Board revised Attachment G to state in cases where a plan has already been prepared that the implementation of the plan is effective immediately. The Fact Sheet has been revised to note that Napa County was timely in preparing the required plan by October 2014.</p>

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Proposed Amendment to General Permit for Storm Water Discharges From Small Municipal Separate Storm Sewer Systems (MS4), Implementing Region-Specific Total Maximum Daily Load (TMDL) Requirements

Comment Deadline: 12 noon on August 21, 2017

Commenter	No.	Comment	Response
	NCFC1-4	In the Body of text for Deliverables/Action required for the Napa River Sediment TMDL: There are no publicly-owned unimproved/dirt/gravel roads in Napa County. Recommended modifications: Remove first bulleted action	The State Water Board is not inclined to remove this requirement. The requirement to continue implementing BMPs for repair of unimproved roads is a practicable solution to erosion and excessive sediment impacts. If the County does indeed have no publicly-owned unimproved roads, then this requirement should have no impact on the commenter.
	NCFC1-5	In the Body of text for Deliverables/Action required for the Napa River Sediment TMDL: BPA says "repair and/or replacement" Recommended modifications: "By [Hard Date: one year from adoption date], submit a schedule for the <u>repair, retrofit</u> and/or replacement of high priority crossings/culverts to the Regional Water Board Executive Officer for approval. For paved roads, erosion and sediment control actions <u>could shall</u> primarily focus on road crossings to meet the <u>performance standard sediment load allocation</u> ."	The State Water Board agrees that the text of the BPA states "repair" instead of "retrofit". This change will be made to reflect the comment. The State Water Board does not agree with the proposed changes at the end of the comment. These requirements are being established to meet the TMDL load allocations assigned.
U.S. Environmental Protection Agency	EPA1-1	The proposed permit amendment does not currently include any requirements related to TMDLs that may be approved during the term of the permit. To expedite implementation of additional controls that may be necessary for compliance with such TMDLs, we recommend the permit include a provision similar to section O of the 2012 MS4 permit for the City of Salinas (permit No. CA0049981) issued by the Central Coast Regional Board. The Salinas permit requires development and submittal within one year of final TMDL approval of a plan for complying with newly approved TMDLs. This is preferable to waiting for the next permit renewal to incorporate newly approved TMDLs.	The State Water Board does not agree and will not incorporate the suggested revisions because the particular requirements of the future TMDLs are currently unknown. While the Central Coast Regional Board (the example pointed to by EPA) generally relies on permittee-proposed plans to implement the TMDL requirements, this is not the case for all Regional Water Boards. Incorporation of any requirements based on future TMDLs into the Order should be subject to a permit reopener and corresponding public review and comment. Also, Regional Water Boards currently have several tools available to them if they wish to implement a particular TMDL before including implementation requirements into aMS4 permit. Some of the tools available are: Water Code 13383 letters, Cease and Desist Orders, Cleanup and Abatement Orders, as well as the public process.
	EPA1-2	For some TMDLs, Attachment G notes that the TMDL specifies a certain compliance deadline, only implying that the deadline is also included in the permit (e.g., Clear Lake Nutrients TMDL and certain others). For greater clarity, we recommend that the permit consistently use language such as found in Attachment G for the Los Angeles Regional Board TMDLs where the permit clearly states that compliance shall be achieved by the indicated date.	Comment Noted. The State Water Board will change the language from "The TMDL specifies that WLAs are to be achieved by..." to "The Final WLA shall be achieved by..."

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	EPA1-3	Lastly, the proposed amendment consistently incorporates by reference WLAs found in the fact sheet into Attachment G to the permit. This may be due to the extensive details of some WLAs and a desire to avoid repeating such detailed requirements. Despite this concern, for added clarity, we recommend that the State Board consider including the specific requirements of the WLAs in Attachment G as well as the fact sheet.	See response to comments CASQA1-1 and CASQA1-8.
	EPA1-4	<p>North Coast Regional Board Shasta River Watershed Temperature & Dissolved Oxygen TMDL The fact sheet indicates that this TMDL does not include a numeric WLA for the one permittee (City of Yreka) subject to the TMDL; the fact sheet should describe what the TMDL does require for the City of Yreka, which is the development and implementation of a plan to minimize pollutants of concern. This would then explain the basis for the requirement in Attachment G that the permittee develop and implement such a plan, which is otherwise unclear.</p> <p>The fact sheet also indicates that the plan is to be submitted for approval by the Regional Board. Attachment G, however, indicates that the plan has been approved by the Regional Board and seems inconsistent with the fact sheet in this regard. The fact sheet and Attachment G should also identify the plan that was approved and the date of approval by the Board, if it has been approved.</p> <p>The TMDL notes that monitoring may be required by responsible parties such as the City of Yreka if directed to do so by the Regional Board. The fact sheet should clarify whether any monitoring requirements have been established by the Regional Board and if so, they should be included in Attachment G.</p> <p>Finally, the TMDL approved by the Regional Board in 2006 required that the permittee begin implementation of the plan by January 2012. Attachment G requires that the permittee begin implementation by July 1, 2017; the fact sheet should explain the basis for this alternate deadline.</p>	<p>The State Water Board agrees with the first three comments. Although, the language in Attachment G will not be revised, but the Fact Sheet will now state: (page 59) "The TMDL does not specify water load allocations for the City of Yreka, <u>but does require the City of Yreka to develop and implement a plan to minimize and control pollutants of concern in urban storm water runoff. That plan was developed and submitted on June 24, 2013, as part of the City's Notice of Intent for this Order.</u> Attachment G of this Order requires the City to <u>implement this plan no later than July 1, 2017.</u> There are no current monitoring requirements for the City related <u>to TMDL implementation.</u> develop a plan to control and/or prevent discharges of fine sediment, nutrients, and other oxygen-consuming materials...."</p> <p>Last paragraph/comment: Regional Water Board staff determined at the time that the City would be better served implementing TMDLs under the Phase II MS4 permit that was due for re-adoption in 2006, and would designate the City at that time. It was unanticipated that the renewal of the Small MS4 permit would take until 2013. The State Water Board contends that the 4 year, instead of the 6 years originally granted, lag in implementation is reasonable. Since this TMDL was in Attachment G as adopted in 2013 the development of the plan should have been completed and implementation should have been started on July 1, 2017 per the adopted Order. This amendment seeks to update the language in the TMDL implementation section to reflect the current state of this program.</p>

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	EPA1-5	<p>San Francisco Bay Regional Board Napa River Sediment TMDL</p> <p>This TMDL sets a WLA of 800 metric tons/year for sediment discharges covered by the small MS4 general permit, and a LA of 27,000 metric tons/year for sediment discharges from roads not covered by NPDES permits. The fact sheet notes the WLA of 800 metric tons/years (corrected from 600 metric tons/year in the 2013 permit), but the WLA is omitted from Attachment G. For compliance with the WLA, the permittees are only required to implement the construction and maintenance requirements of the small MS4 general permit, sections E.10 and E.11, which focus on construction and municipal maintenance activities. This is apparently due to the fact that the small MS4 WLA does not require a reduction in the existing load and that continuation of existing practices is expected to ensure compliance with the WLA; if so, this should be explained in the fact sheet. Further, although sections E.10 and E.11 are the provisions of the permit most relevant for ensuring compliance with the WLA, other sections of the permit could also be relevant such as section E.6 and E.12.</p> <p>As such, we suggest that the permit simply require continued implementation of all existing permit requirements.</p> <p>Attachment G includes a LA of 27,000 metric tons/year of sediment from roads and a corresponding road-related sediment delivery rate of less than or equal to 500 cubic yards/mile per 20-year period. However, suitable monitoring requirements to measure compliance are lacking and need to be added. For unpaved roads, section B.i (first bullet) in Attachment G appears to only require a continuation of existing BMPs. The 2009 Basin Plan Amendment, however, requires an upgrade of existing practices to meet the LA. The third bullet in the section requires BMP upgrades for road crossings/culverts but lacks appropriate requirements for unpaved roads; the Board's 2009 Staff Report for the TMDL had noted that unpaved roads were a significant source of sediment, and should be addressed in Attachment G consistent with the Basin Plan Amendment.</p>	<p>In response to comment re: WLA in Attachment G, please see responses to comments CASQA1-1 and CASQA1-8.</p> <p>The State Water Board agrees that continuing implementing all permit requirements should be required and the Fact Sheet and Attachment G will be edited to reflect this comment.</p> <p>The State Water Board agrees that roads should be addressed in a manner consistent with the comment. Attachment G will be edited to reflect this comment.</p> <p>The State Water Board agrees that a time frame should be established. Attachment G, and Fact Sheet if necessary, will be edited to reflect this comment.</p>

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	EPA1-5 (Con't)	Although Attachment G indicates that the TMDL did not include a compliance deadline (and therefore a deadline was not included), the permit should at least require that compliance be achieved in the shortest practicable time period for consistency with 40 CPR 122.47. The 2009 Staff Report notes that typical timeframes for achieving compliance for sediment WLAs are 3-5 years for plan development, followed by 10-20 years for implementation. We recommend that the Board consider including deadlines such as these in the permit.	
	EPA1-6	Central Coast Regional Water Board The fact sheet indicates that the Central Coast Regional Board has developed its own systematic approach for TMDL implementation called the Wasteload Allocation Attainment Program. The fact sheet also describes the elements of the program which Region 9 generally agrees are appropriate. We would note, however, that Attachment G consistently requires a quantitative analysis demonstrating that proposed BMPs would be sufficient to comply with applicable WLAs. We support this requirement and it should be included in the description of the Wasteload Allocation Attainment Program in the fact sheet.	The State Water Board agrees. The Fact Sheet will be changed to reflect this comment.
	EPA1-7	Morro Bay Sediment TMDL The fact sheet indicates that the TMDL calls for a 50% reduction in sediment discharges by responsible entities including one permitted small MS4, which is the County of San Luis Obispo. The fact sheet should also clarify that the sediment that is targeted is sediment from roads within the watershed. The BMP implementation requirements in Attachment G (somewhat generic at the moment) should focus on reducing sediment from this specific source. The WLA for San Luis Obispo County is 5,137 tons/year. However, it is not clear in Attachment G how compliance with this WLA would be determined. The TMDL intends that compliance would be determined by various receiving water conditions that are not found in Attachment G; accordingly, we recommend that the relevant receiving water conditions be included in Attachment G. The monitoring requirements in Attachment G should also be geared toward monitoring the receiving water	<u>Comment Paragraph 1:</u> The BMP implementation requirements in Attachment G stipulate "implementing specific road sediment control measures." Further specification seems unnecessary. <u>Comment Paragraph 2:</u> The concept of requiring a Wasteload Allocation Attainment Program (WAAP) is that it provides the discharger flexibility in selecting BMPs that it anticipates will be effecting in attaining the WLA. The TMDL includes receiving water conditions as numeric targets, and Attachment G requires the WAAP to include interim targets, and dates by which the targets will be attained. Including the receiving water conditions (numeric targets) themselves in Attachment G would provide no further basis for determining compliance. The TMDL monitoring described in the TMDL will be incorporated into the WAAP. <u>Comment Paragraph 3:</u> The State Water Board finds that TMDL content, such as the origin of compliance deadlines, is reasonably omitted from the

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	EPA1-7 (Con't)	<p>conditions used as compliance indicators by the TMDL.</p> <p>Finally, the fact sheet should explain the origin of the December 2053 final compliance deadline. This appears to be derived from the estimated amount of time thought to be necessary to achieve compliance in the TMDL implementation plan.</p>	<p>Fact Sheet, given the compliance date itself - the key point of compliance - is included.</p>
	EPA1-8	<p>Los Angeles Regional Water Board</p> <p>When the general permit was issued in 2013, TMDL requirements applicable to small MS4s in the Los Angeles Regional Board had not yet been prepared, and are only now being proposed. The permittees are given two options: (1) enter into a cooperative agreement with Phase I MS4s that are currently implementing an approved watershed management program (WMP) or an enhanced WMP (EWMP), or (2) develop their own programs to meet WLAs for approval by the Regional Board.</p> <p>Region 9 generally supports the proposed approach which is used consistently for all the TMDLs, but we offer the following comments. First, although deadlines are proposed in Attachment G for the permittee actions described above (deadlines that we consider to be reasonable), the deadlines should also be noted and explained in the fact sheet. Second, if a permittee selects the first option of entering into a cooperative agreement in the implementation of a WMP or EWMP, it must be the WMP/EWMP that covers the geographic area in which the permittee is located.</p>	<p>The State Water Board agrees that the inclusion of deadlines should be noted and the rationale for the deadline included within the Fact Sheet.</p> <p>In regard to the cooperative agreements, the Fact Sheet currently states on page 91 that the agreement will be with "Phase I MS4 Permittees in the watershed or subwatershed that are implementing an approved Watershed Management Program/Enhanced Watershed Management Program pursuant to one of the Los Angeles Region's Phase I MS4 permits." But the State Water Board agrees that this requirement should be in Attachment G as well. Attachment G will be edited to reflect this part of the comment.</p>
	EPA1-9	<p>Central Valley Regional Water Board</p> <p>Clear Lake Nutrients TMDL</p> <p>For this TMDL, the small MS4s are subject to an aggregate WLA for phosphorus of 2,000 kg/yr (five year rolling average). Attachment G indicates that the WLA is to be achieved via implementation of various BMPs. To provide greater assurance that the BMPs will be sufficient to attain compliance, we recommend that the permit require the submittal of a quantitative analysis to the Regional Board demonstrating the BMPs contemplated by the permittees would be sufficient. Model permit language for consideration can be found in the implementation</p>	<p>The Fact Sheet contains draft amendment text that requires Permittees that have not demonstrated achievement of their WLA by the attainment date to implement BMPs consistent with an Executive Officer-approved Management Plan that outlines BMPs and a schedule to reduce discharges of phosphorus to ultimately attain the WLA. (Page 120 of the June 2017 amendment document.) To provide greater assurance that the BMPs will be sufficient to attain the WLA, the following sentence has been added: <u>"The Central Valley Regional Water Board Executive Officer may require revisions to the Management Plan if the Management Plan is not likely to attain the waste load allocations."</u></p>

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	EPA1-9 (Con't)	requirements for the Central Coast Regional Board's TMDLs. Attachment G also includes the WLA compliance deadline of June 19, 2017, consistent with the 2006 Basin Plan Amendment. The fact sheet explains that WLAs are effective immediately if their compliance deadlines have passed, as is the case here. The fact sheet also notes that permittees may request a time schedule order from the Board in such circumstances, but that deadlines should not be extended via the provisions of a permit. For this TMDL, however, the fact sheet indicates that one compliance option for permittees is the submittal of a management plan by September 21, 2018. Absent additional explanation and justification of this option, we recommend that permittees seek a time schedule order as described in the fact sheet if they wish to obtain an extended deadline.	Attachment G specifies BMP-based WQBELs and other permit requirements for attainment of the wasteload allocations even in cases where the final wasteload allocation deadline is past. These requirements are appropriate because the Order states that it is not the intention of the State Water Board or the Regional Water Boards to take enforcement action against a permittee where (1) a permittee has applied in good faith for a time schedule order and is implementing the requirements in Attachment G pending approval of the time schedule order or (2) the Regional Board has initiated proceedings to revise the implementation schedule or other requirements of a TMDL and the permittee is implementing the requirements in Attachment G pending the outcome of the proceedings. Additionally, the BMP-based WQBELs and other permit requirements specified are expected to inform the requirements and time schedules of any Time Schedule Order that may be issued. The findings of the Order and the Fact Sheet have been revised to explain why Attachment G includes some implementation and planning requirements that post-date the final TMDL attainment deadlines.
	EPA1-10	<p>Lahontan Regional Water Board</p> <p>Middle Truckee River Sediment TMDL</p> <p>This TMDL calls for an overall sediment loading reduction of 20% in the affected watershed. Although mass-based WLAs were developed for urban and non-urban areas, the 2008 Basin Plan Amendment indicates that compliance with the TMDL would be assessed through compliance with a target water column concentration for suspended sediment (90th percentile value less than or equal to 25 mg/l) for protection of aquatic life.</p> <p>Attachment G in the 2013 permit had included the above suspended sediment concentration as the measure of TMDL compliance, but it has been removed from in proposed Amendment. It appears to Region 9 that it is the most appropriate means for assessing compliance and should be retained in the permit. We would point out that the permit only applies to Placer County and the City of Truckee, while the mass-based WLAs were derived for these permittees, along with Nevada County and Sierra County. It's not clear what fraction of the mass-based WLAs</p>	<p>In regards to moving the WLA to the Fact Sheet, please see response to comment NAVY1-1. It should be noted that the 25 mg/L water column concentration of suspended sediment is contained in the Fact Sheet.</p> <p>While it remains unclear what the fraction of the mass-based WLAs are applicable to the named entities, attainment of the WLA has been established by the Regional Water Board to mean meeting the concentration based requirement. Also, the permit amendment proposes various methods for determining compliance. See proposed Order Sections E.15.a.2 and F.5.i.1.b.</p> <p>The State Water Board agrees that the monitoring was omitted in the draft. The State Water Board proposes adding the following language in conformance with the TMDL:</p> <p><u>5. Continue to implement the most recent municipal monitoring program as approved by the Regional Water Board or it's designee.</u></p>

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	EPA1-10 (Con't)	<p>should be assigned to the permittees, nor does the permit include a means for assessing compliance.</p> <p>Table 4.13-TR-4 of the 2008 Basin Plan Amendment calls for, at a minimum, once/month suspended sediment concentration monitoring at Farad. This monitoring requirement is missing and should be included in Attachment G.</p> <p>The proposed Attachment G includes BMP requirements that are generally consistent with the TMDL. However, we would point out that Placer County's map of its permit area in its stormwater management program (available on the County's website) includes the entire Truckee River Watershed, including ski areas. If this is consistent with the Board's understanding, we recommend that an additional BMP be included that would require Placer County at least provide assistance in the implementation of the ski-area BMP requirements. Such a requirement would be consistent with the public education and outreach requirements of the permit and the targeting of appropriate audiences within the permitted area.</p>	<p>The State Water Board agrees that ski area education and outreach is a reasonable approach for this TMDL and have added the following language:</p> <p><u>4. Implement an Education and Outreach program, consistent with Section E.7. of the Order, for the targeted audience of ski areas within the jurisdictional boundaries of the permittees, focusing on sediment and erosion control for those facilities.</u></p>
	EPA1-11	<p>San Diego Regional Water Board Bacteria Project I - Twenty Beaches and Creeks TMDL</p> <p>While the proposed Attachment G generally includes requirements consistent with this TMDL, we recommend clarification of the compliance deadline. Attachment G provides an alternate compliance deadline of April 4, 2031 (rather than April 4, 2021) if the SWPPP addresses pollutants other than bacteria. The fact sheet needs additional explanation of this alternate deadline. It apparently results from the provision in the TMDL for an extended compliance deadline for permittees that develop a Comprehensive Load Reduction Plan (CLRP) that would address bacteria and other pollutants of concern; the SWPPP is apparently being considered the equivalent of a CLRP, but this is not clear from the fact sheet or the permit. Moreover, section F.5.f.4 of the permit indicates that SWPPPs are intended only for "hotspots and high priority sites" and may not fully capture the intent of the TMDL for a CLRP. The fact sheet for the permit notes that although stormwater management programs are not required by the permit, some sort of overall guidance document would still be expected to serve as a</p>	<p>The State Water Board will add the following paragraph below the compliance dates table. "<u>A Storm Water Pollution Prevention Plan that includes a bacteria load reduction program is expected to include information similar to what is described in the section called Bacteria Load Reduction Plan Outline in Appendix P of the Final Technical Report to Order No. 2010-0001. A Storm Water Pollution Prevention Plan that includes a load reduction program for multiple constituents together with bacteria load controls is expected to include information similar to what is described in the section called Comprehensive Load Reduction Plan Outline in Appendix P of the Final Technical Report to Order No. 2010-0001. Some of the components described in both outlines may be satisfied through collaboration with the Phase I MS4 dischargers, as their efforts to comply with the Bacteria TMDL include implementing controls, monitoring, and reporting.</u>"</p>

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	EPA1-11 (Con't)	roadmap for permittees in complying with the permit. Such a guidance document would likely be more comprehensive than a SWPPP, and provided it met the intent of the TMDL for a CLRP, may be more appropriate than the SWPPP to cite as a possible avenue for obtaining for the extended compliance deadline.	
County of Santa Barbara	CSB1-1	<p>Attachment G does not include language describing how TMDL attainment will be evaluated.</p> <p>The Basin Plan Amendments addressing each of the three TMDLs for which Santa Barbara County is a responsible party (Resolutions R3-2014-0009, R3-2013-0013, and R3-2012-0002) outline how Water Board staff will assess or evaluate attainment of the waste load allocations. This wording is absent from the proposed Attachment G. There is no explanation of how compliance with this permit provision will be determined by the Water Board.</p> <p>Recommendation</p> <p>Include the language from the Basin Plan Amendments and/or incorporate CASQA's recommendations. See attached Exhibit.</p>	The State Water Board supports this comment. Please see response to comments CASQA 1-1 and CASQA1-8. See also, proposed revisions to the Order, sections E.15.a.2 and F.5.i.1.b.
	CSB1-2	<p>Attachment G language does not match the Basin Plan Amendment language.</p> <p>The discrepancies between the adopted TMDL Basin Plan Amendments and the proposed Attachment G are significant. The TMDLs for the Santa Maria River Watershed: Fecal Indicator Bacteria, Nitrogen Compounds and Orthophosphate, and Toxicity and Pesticides, all contain added requirements for implementation including identification of additional milestones, measurable goals, measures and targets, and quantitative analysis to demonstrate achievement of wasteload allocation.</p> <p>Recommendation</p> <p>Revise the proposed Attachment G language to be consistent with the adopted TMDL Basin Plan Amendments. See attached Exhibit.</p>	As detailed in the Fact Sheet, the State Water Board finds the requirements in Attachment G to be consistent with the assumptions and requirements of the wasteload allocations in the relevant TMDLs.

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California Water Service	CWS1-1	Cal Water requests an exclusion for water purveyors from TMDL requirements for discharges flowing to Small MS4s in the lower Salinas Valley. We respectfully submit that the SWRCB and Central Coast RWQCB should instead continue to pursue actions to improve groundwater quality in the area through the new Agricultural Order and related outreach to the agricultural industry.	The comment is noted. As an NPDES permitted discharge, Cal Water currently has an exception to the prohibition of discharge of non-storm water to the relevant MS4s under Requirement B.3. of the permit and this permit amendment does not impact that exception.
California State University, Office of the Chancellor	CSUOC2-1	An extension to October 20, 2017 is again requested.	An extension of comment period was not granted a second time.
University of California, Riverside	UCR1-1	Attachment G – Region-Specific Requirements, Region 8: Santa Ana Regional Board, TMDL for Middle Santa Ana River Bacterial Indicator Alternative participation in stakeholder group comprehensive bacteria reduction plans should be included. We request that the SWRCB consider including, as an alternative to a facility-specific bacteria reduction plan, participation in a more geographically comprehensive bacteria reduction plan for the Middle Santa Ana River Bacterial Indicator TMDL.	Participation in the Comprehensive Bacteria Reduction Plan is not possible as that document is outdated. However, UC Riverside may participate in an updated Comprehensive Bacteria Reduction Plan or equivalent document that is acceptable to the Executive Officer. Attachment G is revised to reflect this comment and response.
	UCR1-2	Attachment G – Region-Specific Requirements, Region 8: Santa Ana Regional Board, TMDL for Middle Santa Ana River Bacterial Indicator Wasteload allocations should be directly incorporated into Attachment G to clearly identify Region-Specific TMDL Requirements	See response to comments CASQA1-1 and CASQA1-8.
U.S. Marine Corps	USMC1-1	There is conflicting information in the Small MS4 Permit Amendment, between Attachment G and the Fact Sheet, with respect to Phase II permittee/discharger identification and compliance responsibilities. Page 125 of the Fact Sheet under "Phase II Entities" states "The Bacteria Project I TMDL identifies responsible dischargers contributing to indicator bacteria exceedances in REC-1 designated receiving waters for 20 listings of beaches and inland water bodies," and then lists the Non-Traditional MS4s. MCIWEST-MCB CAMPEN is not listed here, which would indicate that stated responsibilities and requirements (SWPPP, monitoring, etc.) do not apply to the Base. However, MCIWEST-MCB	Failing to list Marine Corps Base Camp Pendleton (MCBCP) in the Fact Sheet is a typographical error. The State Water Board will make the following addition to the Fact Sheet language: The specific Phase II entities within the impaired water quality segments identified in the Bacteria I TMDL are: <u>"United States Marine Corps Base Camp Pendleton"</u> , University of California, San Diego, San Diego State University....., all Non-Traditional MS4s."

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	USMC1-1 (Con't)	CAMPEN is listed in Attachment G, Bacteria Project I TMDL - Twenty Beaches and Creeks in the San Diego Region, as a Phase II Entity; meaning requirements for implementing the TMDL would apply to the Base. Please clarify what TMDL requirements would apply to MCIWEST-MCB CAMPEN.	
	USMC1-2	Several of the proposed compliance deadlines contained on page 126 of the Fact Sheet are near term or have passed. If these deadlines apply to MCIWEST-MCB CAMPEN, there would be significantly more time needed to comply than has been proposed. Additionally, the Bacteria Project I TMDL (Attachment G, paragraph 2) specifies that monitoring and assessment results for discharges from MS4 locations must be submitted within 3 months of the adoption date, assumed to be December 2017. This is insufficient time for MCIWEST-MCB CAMPEN to complete dry and wet weather monitoring, if required of the Base. Dry weather monitoring would not occur until 2018. Therefore, MCIWEST-MCB CAMPEN requests at least one year (12 months) to complete monitoring and provide results.	The State Water Board agrees and the date will be edited.
	USMC1-3	MCIWEST-MCB CAMPEN recommends that only outfalls collecting stormwater from an area with an activity code known to contribute anthropogenic bacteria (i.e. confined animal pens), be subject to monitoring, as a more cost-effective use of funds. Therefore, MCIWEST-MCB CAMPEN proposes that the "Deliverables/Actions Required" on Attachment G, page 93, paragraph 2 of the proposed Amendment be changed. from: " ... monitor discharges from facilities including MS4 discharge locations to demonstrate progress towards compliance with final waste load allocations" to: " ... monitor discharges from facilities or discharge locations where the expected pollutant loading is greater than the average pollutant loading for the land use, to demonstrate progress towards compliance with final waste load allocations".	The State Water Board believes the language in Attachment G allows MCBCP to monitor discharges from facilities or other discharge locations so that it can demonstrate that their discharges are not causing or contributing to an exceedance of a waste load allocation. Therefore, the State Water Board is not making a change to the language. Additionally, requirement 3 encourages Phase II permittees to collaborate with the Phase I permittees (i.e. City of Oceanside is in the San Luis Rey watershed).

Draft Comment Summary and Responses

Proposed Amendment to General Permit for Storm Water Discharges From Small Municipal Separate Storm Sewer Systems (MS4), Implementing Region-Specific Total Maximum Daily Load (TMDL) Requirements

Comment Deadline: 12 noon on August 21, 2017

Commenter	No.	Comment	Response
	USMC1-4	In addition, housing areas have multiple stormwater discharges, but the discharge characteristics are expected to be identical since the housing design and BMP maintenance programs are managed by the same private housing entity. Therefore, we recommend that the proposed Amendment (Attachment G, page 93, paragraph 3) be revised to allow for "representative monitoring" of discharge locations. (Representative monitoring is allowed under the EPA drinking water program; representative monitoring is the use of monitoring results of one water quality monitoring sample to represent other sampling locations with similar BMPs expected to have the same water quality.)	The State Water Board believes the Permit already allows for representative monitoring. Section F.5.i.2 states monitoring requirements are specified in the adopted and approved Regional Water Board Basin Plans and authorizing resolutions which are incorporate herein by reference. Attachment A to Resolution No. R9-2010-0001 explains the expectation that Phase II MS4s, identified as a source of bacteria causing exceedances of the TMDL, is responsible for reducing their bacteria loads and/or demonstrate, through monitoring, that controllable anthropogenic discharges are not causing the exceedances. Such a demonstration may include a Phase II MS4 conducting representative MS4 outfall monitoring, receiving water monitoring, or a demonstration that best management practices are controlling sources of bacteria such that the waste load allocations do not exceed the values in Attachment A pages A-63 through A-65 of Resolution No. R9-2010-0001. Additionally, page 39 of the Permit Fact Sheet states: "For the majority of Phase II Permittees, this permit term will be the first time a monitoring program has been implemented. As such, prioritization of monitoring allows for a firm foundation from which Phase II Permittees may initiate and develop monitoring programs that will result in improvement of local knowledge of water quality impacts and implementation of storm water management practices. Any of the monitoring requirements may be conducted through participation in a regional monitoring group. Regional monitoring not only allows Permittees to share costs but also facilitates monitoring data and information sharing across local regions. In effect, regional programs provide a broad-scale picture of water quality condition within a watershed. "
	USMC1-5	MCIWEST-MCB CAMPEN has significant areas of open space which contributes bacteria from natural sources (i.e. wildlife, soils, etc.). It is not clear in the Amendment Fact Sheet (Bacteria Project I TMDL) if natural sources are accounted for in the Wasteload Allocations. In addition, the SWRCB has recently proposed new bacteria provisions and a water quality standards variance policy, which include natural source exclusion provisions. MCIWEST-MCB CAMPEN needs to account for natural sources of bacteria in the levels monitored in stormwater discharges, to establish actual bacteria loadings contributed by MCIWEST-MCB CAMPEN's use of the land. MCIWEST-MCB CAMPEN	Natural sources of bacteria were accounted for in the development of the Bacteria TMDL as described in Finding 22 of Resolution No. R9-2010-0001, therefore the State Water Board is not making any changes to the Fact Sheet in response to this comment.

Draft Comment Summary and Responses
Proposed Amendment to General Permit for Storm Water Discharges From Small Municipal Separate Storm Sewer Systems
(MS4), Implementing Region-Specific Total Maximum Daily Load (TMDL) Requirements
Comment Deadline: 12 noon on August 21, 2017

Commenter	No.	Comment	Response
	USMC1-5 (Con't)	requests that the Amendment more clearly explain how natural sources of bacteria are accounted for in the Bacteria Project I TMDL.	
	USMC1-6	Attachment G, page 93, paragraph 1, states that the Phase II entities shall "develop and implement a Stormwater Pollution Prevention Plan (SWPPP) as required by section F.5.f.4 of this Order including additional measures necessary to achieve reductions in fecal coliform, enterococcus, and total coliform by the final compliance dates as required by the TMDL. The SWPPP must include short term and long term Best Management Practices (BMPs) strategies appropriate for the prioritization schedule in Attachment A pages A-63 through A-65 of Resolution No. R9-2010-0001". The current language is too broad and does not stipulate what facilities would be required to have a SWPPP, and it seems unreasonable to assume that all facilities that are potential bacterial sources would be subject to a SWPPP if those facilities did not also qualify as a pollutant hotspot (defined in section F.5.f.3 of the Small MS4 Permit). This paragraph should be clarified to state that the SWPPP's are only required for pollutant hotspots at high priority sites, previously identified in section F.5.f.3 of the Small MS4 Permit.	As a Permittee since 2013, Marine Corps Base Camp Pendleton has been subject to section F of the Phase II General Permit for four years. As such, by Year 3 (i.e. 2016) of the Permit implementation, MCBCP is required to conduct its assessment of all Permittee-owned or operated facilities to determine their potential to impact surface waters. Therefore, the San Diego Water Board expects MCBCP to have completed this assessment and be aware of those facilities it owns or operates that are sources of bacteria. The receiving waters identified in the Bacteria I TMDL are impaired for bacteria, therefore all identified sources of bacteria (i.e. Phase II MS4s) in the TMDL must be controlled in accordance with the requirements in Attachment G. Section F.5.i requires Phase II MS4s to comply with the all applicable TMDLs. The San Diego Water Board is requiring Phase II MS4s to reassess their facilities and discharges as part of their requirements in the Phase II MS4 Permit to address the limitations placed on discharges of bacteria to the impaired receiving waters identified in the TMDL. The need to develop a SWPPP is already clearly required in the Phase II MS4 Permit and does not need to be further defined in Attachment G. The State Water Board is not making any changes to the language in Attachment G in response to this comment.
Department of the Army	ARMY1-1	Fort Hunter Liggett, Army Garrison is listed and designated by the Central Coast Regional Board Regional Water Board) as a non-traditional small MS4 with the justification of "Within urbanized area". Fort Hunter Liggett objects to this designation and requests that Fort Hunter Liggett be removed from the non-traditional small MS4 list.	Outside of scope of Amendment. Although, the State Water Board will direct staff to coordinate with the Regional Water Board staff to confirm the designation under this permit. If the State and Regional Water Boards find that Fort Hunter Liggett was erroneously designated, staff will prepare an Executive Order for amending Attachment B to remove.
	ARMY1-2	In Responses to Comments from May 21, 2012, the Regional Water Board agreed to revise the permit to reflect this same comment raised by the Department of Defense at that time. However, the permit was not revised as agreed. A copy of the Department of Defense comment and Water Board response is attached for reference. [Attachment included with comments]	Outside of scope of Amendment. The State Water Board will direct staff to coordinate with Regional Water Board staff to confirm the designation under this permit. If the State and Regional Water Boards find that Fort Hunter Liggett was erroneously designated, staff will prepare an Executive Order for amending Attachment B to remove.

Draft Comment Summary and Responses

Proposed Amendment to General Permit for Storm Water Discharges From Small Municipal Separate Storm Sewer Systems (MS4), Implementing Region-Specific Total Maximum Daily Load (TMDL) Requirements

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Commenter	No.	Comment	Response
<u>Comments Received that were accepted late</u>			
<u>California State University, Office of the Chancellor</u>	CSUOC3-1	It is thus recommended that the amendment for Phase II MS4 Permit TMDLs be updated to include a provision that enables CSU with the ability to develop a program within twelve months following adoption of the Phase II MS4 Permit TMDLs, in collaboration with State and Regional Water Boards, which is specific to CSU circumstances and provides the ability to develop clear procedures and programs that will lead to compliance with the intent of the amendment for Phase II MS4 Permit TMDLs.	<p>The State Water Board believes that the flexibility and timeframe asked for are already given within the proposed Attachment G and Order.</p> <p>Specifically, in the Central Coast Region, the TMDL implementation language was adopted in 2013 and included provisions for California Polytechnic, San Luis Obispo. So the campus of California Polytechnic, San Luis Obispo has already been subject to these requirements since 2013.</p> <p>In the Los Angeles Region, the proposed language in Attachment G allows for a 1-year development period for an individual plan. There is nothing within the proposed language that would preclude coordination with local agencies or collaboration with State and Regional Water Boards.</p> <p>In the San Diego Region, the proposed language requires continued implementation of the Storm Water Pollution Prevention Plan (SWPPP). Development of the SWPPP, as required by Section F.5.f.4 of the Order, was a fourth year program that should have been completed by July 1, 2017.</p>